

APPEAL,ROWLAND,TERMED

United States District Court
Northern District of Illinois – CM/ECF LIVE, Ver 6.2.1 (Chicago)
CIVIL DOCKET FOR CASE #: 1:13-cv-03643
Internal Use Only

Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v.
Heritage Union Life Insurance Company
Assigned to: Honorable John Robert Blakey
Case in other court: 17-01461
17-03595
Circuit Court of Cook County, 2013 L
003498

Date Filed: 05/16/2013
Date Terminated: 11/21/2017
Jury Demand: None
Nature of Suit: 110 Contract: Insurance
Jurisdiction: Diversity

Cause: 28:1441 Petition for Removal

Date Filed	#	Page	Docket Text
04/18/2016	<u>230</u>	4	MINUTE entry before the Honorable John Robert Blakey: Third Party Plaintiff Eliot Bernstein's motion for leave to file excess pages <u>228</u> is denied. The notice of motion date set for 4/21/16 is stricken, the parties need not appear at that time. Mailed notice (gel,) (Entered: 04/18/2016)
04/29/2016	<u>231</u>	5	MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein for leave to file <i>Amended Complaint</i> (Bernstein, Eliot) (Entered: 04/29/2016)
05/02/2016	<u>233</u>	24	RESPONSE by Ted Bernstein, Ted Bernstein(an individual), Ted Bernstein, Adam M Simon, Pamela Beth Simonin Opposition to MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein for leave to file <i>Amended Complaint</i> <u>231</u> (Attachments: # <u>1</u> Exhibit Ex-A, # <u>2</u> Exhibit Ex-B)(Simon, Adam) (Entered: 05/02/2016)
05/12/2016	<u>237</u>	40	REPLY by Eliot Ivan Bernstein, Eliot Bernstein, Eliot Ivan Bernstein to response in opposition to motion, <u>233</u> (Bernstein, Eliot) (Entered: 05/12/2016)
05/12/2016	<u>238</u>	57	MINUTE entry before the Honorable John Robert Blakey: Case called for motion hearing on 5/12/2016 and no one appeared, either initially or when the case was recalled at the end of the Court's status and motion call. Neither side advised the Court of any conflict. Status hearing reset to 5/26/2016 at 9:45 AM in Courtroom 1725. Failure to appear on 5/26/2016 may result in dismissal of this case for want of prosecution pursuant to Local Rule 41.1. Mailed notice (gel,) (Entered: 05/12/2016)
05/21/2016	<u>239</u>	58	MOTION by Third Party Defendants David B Simon, Ted Bernstein, S.T.P. Enterprises, Inc., Adam M Simon, The Simon Law Firm, Ted Bernstein, Pamela Beth Simon, Cross Defendant Ted Bernstein for summary judgment <i>as to Eliot Bernstein's Claims</i> (Simon, Adam) (Entered: 05/21/2016)
05/21/2016	<u>240</u>	62	

			RULE 56 Statement by Ted Bernstein, Ted Bernstein(individually and as alleged Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95), S.T.P. Enterprises, Inc., Adam M Simon, David B Simon, Pamela Beth Simon, The Simon Law Firm regarding motion for summary judgment, <u>239</u> <i>STMT OF UNDISPUTED FACTS</i> (Attachments: # <u>1</u> Appendix Appendix to Statement of Facts, # <u>2</u> Exhibit Ex. 1, # <u>3</u> Exhibit Ex. 2, # <u>4</u> Exhibit Ex. 3, # <u>5</u> Exhibit Ex. 4, # <u>6</u> Exhibit Ex. 5, # <u>7</u> Exhibit Ex. 6, # <u>8</u> Exhibit Ex. 7, # <u>9</u> Exhibit Ex. 8, # <u>10</u> Exhibit Ex. 9, # <u>11</u> Exhibit Ex. 10, # <u>12</u> Exhibit Ex. 11, # <u>13</u> Exhibit Ex. 12, # <u>14</u> Exhibit Ex. 13, # <u>15</u> Exhibit Ex. 14)(Simon, Adam) (Entered: 05/21/2016)
05/21/2016	<u>241</u>	405	MEMORANDUM by Ted Bernstein, Ted Bernstein(individually and as alleged Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95), S.T.P. Enterprises, Inc., Adam M Simon, David B Simon, Pamela Beth Simon, The Simon Law Firm in support of motion for summary judgment, <u>239</u> <i>as to Eliot Bernstein's Claims</i> (Simon, Adam) (Entered: 05/21/2016)
05/25/2016	<u>245</u>	422	MOTION by Intervenor Plaintiff Brian M. O'Connell for summary judgment (Stamos, James) (Entered: 05/25/2016)
05/25/2016	<u>246</u>	428	MEMORANDUM by Brian M. O'Connell in support of motion for summary judgment <u>245</u> (Stamos, James) (Entered: 05/25/2016)
05/25/2016	<u>247</u>	446	STATEMENT by Intervenor Plaintiff Brian M. O'Connell in Support of MOTION by Intervenor Plaintiff Brian M. O'Connell for summary judgment <u>245</u> (Stamos, James) (Entered: 05/25/2016)
05/26/2016	<u>250</u>	465	MINUTE entry before the Honorable John Robert Blakey: Status hearing held on 5/26/2016. Motion for leave to file amended complaint <u>231</u> is denied. Any response to dispositive motions shall be filed on or before 7/26/2016; replies shall be filed on or before 9/6/2016. Status hearing set for 9/20/2016 at 9:45 a.m. in Courtroom 1725. Mailed notice (gel,) (Entered: 05/26/2016)
06/02/2016	<u>251</u>	466	MINUTE entry before the Honorable John Robert Blakey: In light of the proceedings in court on 5/26/16, the 6/7/16 Notice of Motion date is stricken, and the parties need not appear. Mailed notice (gel,) (Entered: 06/02/2016)
07/17/2016	<u>252</u>	467	MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein for extension of time , MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein for extension of time to file response/reply (Bernstein, Eliot) (Entered: 07/17/2016)
07/18/2016	<u>254</u>	478	MINUTE entry before the Honorable John Robert Blakey: Eliot Bernstein's motion for extension of time <u>252</u> is granted. Any response to dispositive motions shall be filed on or before 8/26/2016; replies shall be filed on or before 10/6/2016. The 7/21/16 Notice of Motion date is stricken, and the parties need not appear. The status hearing previously set for 9/20/2016 is stricken and reset for 10/27/2016 at 9:45 a.m. in Courtroom 1725. Mailed notice (gel,) (Entered: 07/18/2016)
08/24/2016	<u>255</u>	479	

			RULE 56 Statement by Ted Bernstein(an individual), Ted Bernstein, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 regarding motion for summary judgment <u>245</u> <i>Supplemental</i> (Attachments: # <u>1</u> Appendix Supplemental Appx to Stmt of Facts, # <u>2</u> Exhibit Ex. 37 -- Aff. of Spallina, # <u>3</u> Exhibit Ex. 38 -- Probate Order 12/15/15)(Simon, Adam) (Entered: 08/24/2016)
08/24/2016	<u>256</u>	503	MEMORANDUM by Ted Bernstein(an individual), Ted Bernstein, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 in Opposition to motion for summary judgment <u>245</u> <i>by Estate of Simon Bernstein</i> (Attachments: # <u>1</u> Notice of Filing cert of service/not filing)(Simon, Adam) (Entered: 08/24/2016)
08/26/2016	<u>257</u>	524	RESPONSE by Eliot Ivan Bernstein, Eliot Bernstein, Eliot Ivan Bernstein in Opposition to MOTION by Intervenor Plaintiff Brian M. O'Connell for summary judgment <u>245</u> (Bernstein, Eliot) (Entered: 08/27/2016)

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6,1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable John
Robert Blakey

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, April 18, 2016:

MINUTE entry before the Honorable John Robert Blakey: Third Party Plaintiff Eliot Bernstein's motion for leave to file excess pages [228] is denied. The notice of motion date set for 4/21/16 is stricken, the parties need not appear at that time. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

Simon Bernstein Irrevocable
Insurance Trust Dtd 6/21/95, et al.,

Plaintiffs,

v.

Heritage Union Life
Insurance Co., et al.,

Defendants.

Case No. 13-cv-3643

Judge John Robert Blakey

Filers:

Eliot Ivan Bernstein, Pro Se

**THIRD-PARTY DEFENDANT ELIOT I. BERNSTEIN'S MOTION FOR LEAVE TO
AMEND COUNTERCLAIMS - THIRD PARTY COMPLAINT**

Third-Party Defendant Eliot I. Bernstein consistent with this Court's most recent Status Conference Order respectfully moves under Fed. R. Civ. P. 15(a), 18(a), 19(a) and 20 for leave to file Amended Counterclaims and Third Party Complaint herein. Specifically, Eliot I. Bernstein seeks to Amend his Answer and Counterclaims-Third Party Complaint to (1) add claims against existing parties to this action over which the Court currently has jurisdiction and; (2) add parties as Third Party defendants which are necessary for complete relief herein and adding other parties and claims arising out of a common nucleus of facts and transactions. Such added claims are in the nature of determining and declaring certain Trust instruments and company entities, tortious interference-delay interference with rights of expectancy-inheritance; breaches of fiduciary duties, negligence, conversion, loss and waste of assets, conspiracy and acting in concert and common and joint action with "state actors" under 42 USC Sec. 1983 to

deprive fundamental due process, First Amendment retaliation claims, conspiracy to deprive fundamental fair access to the courts, deliberate indifference and failure to train, and conspiracy to deny, lose, destroy conceal and alter evidence.

Procedural History

This motion is made after a Status Conference held April 14, 2016 and Order therein setting a schedule for certain actions. This Status Conference came after a prior Conference where this Court issued a Decision and Order denying Summary Judgment to Plaintiffs and after a prior Conference where Third-Party Defendant Eliot I. Bernstein had moved for Injunctive relief under the All Writs Act and Anti-Injunction Act. Discovery is currently closed and had been stayed for a significant time under the prior Judge assigned in this action, Hon. Amy St. Eve who had stayed Discovery pending determination of whether Ted Bernstein was a proper “trustee”. While it was never determined that Ted Bernstein is a proper Trustee, minimal Discovery including one deposition occurred before Hon. Judge St. Eve was suddenly no longer assigned on the case. Plaintiffs moved for Summary Judgment shortly after this Court became assigned and held status conferences in the case and the action was re-scheduled off calendar several times while Decision on the Summary Judgment was awaiting. There has been a significant change in the status of the case recently in that Plaintiffs Jill Bernstein Iantoni and Lisa Friedstein are no longer represented by counsel Adam Simon and the Court and parties are awaiting to see if these Plaintiffs will be represented by counsel or acting pro se. These Plaintiffs had been added to the action by way of Plaintiff’s First Amended Complaint. The status of the 2 Plaintiffs and change of counsel occurred shortly after it was disclosed on the record that a gruesome dead body with gun wounds to the head was found at the Boca Raton home of deceased Simon Bernstein at 7020 Lions Head Lane in the day or days before Eliot Bernstein filed for Injunctive relief under the All Writs and Anti-Injunction act. The body is alleged to be

one Mitch Huhem who was allegedly acquiring the property at Lions Head Lane through a transaction involving a shell company and deal with Ted Bernstein and his attorney Alan Rose. Adam Simon who filed the First Amended Complaint for Ted Bernstein now no longer represents the sisters Jill Bernstein Iantoni and Lisa Bernstein Friedstein. Third Party Defendant Eliot Bernstein's original Answer and Counterclaims alleged Ted Bernstein and others to be involved in a massive fraud scheme including fraudulent insurance scheme and fraud upon the courts in Palm Beach County of Florida where the dead body was found.

LEGAL STANDARDS

This is a motion seeking leave to Amend counterclaims against existing parties by adding new counts, adding parties to the new counts, and adding claims under 42 USC Sec 1983. In the Seventh Circuit, "leave to file a second amended complaint should be granted liberally." *Dubicz v. Commonwealth Edison Co.*, 377 F.3d 787, 792 (7th Cir. 2004). It is well-settled that courts should apply a liberal policy respecting amendments to pleadings so that cases may be decided on the merits. *Sitrick v. Freehand Sys.*, 2004 WL 725306, at *2 (N.D. Ill. Mar. 31, 2004). "[I]n the absence of delay, undue prejudice to the party opposing the motion, or futility of the amendment, leave should be freely given." *Eastern Natural Gas Corp. v. Aluminum Co. of Am.*, 126 F.3d 996, 999 (7th Cir. 1997).

A court may grant a party leave to add counterclaims if the failure to previously bring those claims was the result of "oversight, inadvertence, or excusable neglect, or when justice requires." Fed. R. Civ. P. 13(f). Further, leave to amend a pleading should "be freely given when justice so requires," Fed. R. Civ. P. 15(a), unless "the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment

would have been futile,” *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir.2006) (internal quotation marks omitted).

If, however, there are at least colorable grounds for relief, justice requires that the motion to amend be granted. *Ryder Energy Distrib. Corp. v. Merrill Lynch Commodities Inc.*, 748 F.2d 774, 783 (2nd Cir. 1984) (quoting *S.S. Silberblatt, Inc. v. East Harlem Pilot Block-Bldg. 1 Housing Dev. Fund Co.*, 608 F.2d 28, 42 (2nd Cir. 1979); *Schwimmer v. Guardian Life Ins. Co.*, No. 93 Civ. 0428, 1996 WL 146004, at *3 (S.D.N.Y. Apr. 1, 1996) (allowing amendment where “it is not so frivolous or outlandish to render it futile”), *aff’d*, 104 F.3d 354 (2nd Cir. 1996); *Weg v. Macciarola*, 729 F.Supp. 328, 341 (S.D.N.Y. 1990) (motion should be granted unless amendment is frivolous or facially insufficient). Before dismissing a party’s claims on technical or procedural grounds, a court must consider the “sound public policy” preference of deciding cases on their merits. See *Reizakis v. Loy*, 490 F.2d 1132, 1135 (4th Cir. 1974).

The Rule does not prescribe a time limit for the filing of amendments. Consequently, motions for leave to amend have been granted at various stages of litigation, including after the entry of judgment. See, e.g., *Newark Branch, NAACP v. Harrison*, 907 F.2d 1408, 1417 (3rd Cir. 1990).

Rule 15(a) "embodies the liberal pleading philosophy of the federal rules" in order to ensure that claims will be decided on the merits. *Adams v. Gould*, 739 F.2d 858, 864 (3d Cir. 1984), *cert. denied*, 469 U.S. 1122 (1985); *Dole v. Arco Chemical Co.*, 921 F.2d 484, 487 (3d Cir. 1990). The same standard applies when considering a request to add or drop parties. *Rolo v. City Investing Co. Liquidating Trust*, 155 F.3d 644, 654 (3d Cir. 1998).¹

Two claims are part of the same case or controversy if they “derive from a common nucleus of operative facts. A loose factual connection between the claims is generally

sufficient.” Baer v. First Options of Chicago, Inc., 72 F.3d 1294, 1299 (7th Cir. 1995) (quoting Ammerman v. Sween, 54 F.3d 423, 424 (7th Cir. 1995)).

To establish § 1983 liability through a conspiracy, a plaintiff must [establish that] (1) a state official and private individual(s) reached an understanding to deprive plaintiff of his constitutional rights; and (2) those individual(s) were willful participants in joint activity with the State or its agents.”¹ Williams v. Seniff, 342 F.3d 774, 785 (7th Cir.2003).

Joint activity by a private party and a government agent can also transform the private party into a state actor, where the purpose of the collusion is to violate the federal rights of the plaintiff. *Addickes v. S. H. Kress Co.*, 398 U.S. 144 (1970) (involving conspiracy between “dime store” and local deputy sheriffs to prevent integration of southern lunch counter during Civil Rights Movement).

Similarly, in *Dennis v. Sparks*, the Court held that private parties who conspired with a judge to fix a case acted under color of law. A nominally private entity controlled by the state is also a state actor. *Dennis v. Sparks*, 449 U.S. 24, 28-29 (1980). Thus, even though the Palm Beach Judges Colin, French and Phillips may be immune from liability under 1983, private parties acting in concert can be held liable and state Court judges can be made witnesses under 1983.

A private party may be engaged in “state action” if the act which deprived federal rights could not have occurred but for the existence of a governmental framework requiring government approval or action. In *North Georgia Finishing, Incorporated v. Di-Chem, Incorporated*, the Court found state action in a private party’s invocation of a court-ordered attachment that failed to afford due process to the debtor. Similarly, in *Lugar v. Edmondson Oil*

Company, the Court held that a creditor who invokes prejudgment attachment remedies requiring the participation of a court clerk and a sheriff, acts under color of state law.

In *Edmondson v. Leesville Concrete Company*, the Court found that a private attorney using peremptory challenges in a jury trial in a racially biased manner was a “state actor” because his act—use of peremptory challenges—could exist only in the judicial context and with the approval of a state judge. The rule of these cases is that a private party becomes a state actor if he or she uses a state procedure requiring some state intervention. There is a sufficiently close nexus between the State and the challenged action ... so that the action of the [private party] may be fairly treated as that of the State itself. *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982)).

The Fourteenth Amendment entitles the individual to a fair opportunity to present his or her claim. *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62; *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113; *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437, 102 S.Ct. 1148, 1158, 71 L.Ed.2d 265.

Judicial access must be "adequate, effective, and meaningful." *Bounds v. Smith*, 430 U.S. 817, 822, 97 S.Ct. 1491, 1495, 52 L.Ed.2d 72. To deny such access defendants need not literally bar the courthouse door or attack plaintiffs' witnesses. This constitutional right is lost where, as here, police officials shield from the public and the victim's family key facts which would form the basis of the family's claims for redress.

The 7th Circuit has recognized claims under 1983 where actions of Police Officers and other State actors conceal, cover-up and sabotage investigations and therefore deny proper access to the Courts. The right of individuals to pursue legal redress for claims which have a reasonable basis in law and fact is protected by the First and Fourteenth Amendments. *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741, 103 S.Ct. 2161, 76 L.Ed.2d 277 (1983); *Bell v. City of Milwaukee*, 746 F.2d 1205, 1261 (7th Cir.1984). A corollary of this right is that efforts by state

actors to impede an individual's access to courts or administrative agencies may provide the basis for a constitutional claim under 42 U.S.C. § 1983. Judicial access must be "adequate, effective, and meaningful," *Bounds v. Smith*, 430 U.S. 817, 822, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977), and therefore, when police officers conceal or obscure important facts about a crime from its victims rendering hollow the right to seek redress, constitutional rights are undoubtedly abridged. *Bell*, 746 F.2d at 1261; see also *Stone v. City of Chicago*, 738 F.2d 896 (7th Cir.1984); *Ryland v. Shapiro*, 708 F.2d 967 (5th Cir.1983).

Argument - Amendments

There can be no finding that Eliot Bernstein acted in bad faith or a dilatory motive in seeking to Amend his counterclaims, third party complaint and adding new parties or causes of action.

Eliot Bernstein's motion to amend will foster judicial economy and afford more complete relief amongst the parties. There is no change of theory brought forth by Third-Party Eliot Bernstein herein. All claims and parties to be added are consistent with the original Answer and Counterclaims filed in Sept. of 2013 outlining massive insurance and related frauds and all claims and parties added are the result of the conduct of these parties in furthering the underlying scheme set out therein.

Plaintiffs chose the venue by the very bringing of the original litigation in Illinois which was designed to deprive Eliot Bernstein of rights of expectancy and inheritance. In fact, Third-party Defendant Eliot Bernstein was only brought in to the case by an insurance carrier after Ted Bernstein and those parties acting in concert had filed in Illinois without his knowledge. This Court has both diversity jurisdiction and jurisdiction over claims under 42 USC Sec. 1983. This Court has spent extensive time in the action and the original Summary Judgment proceedings

alone were extensive. This Court is able to hear all such claims and afford more complete relief amongst the parties.

This Court announced at the recent Status Conference that it's Trial Calendar was already heavily booked in the summer. There is ample time for all parties to file answers, responsive pleadings and dispositive motions without affecting any current Trial calendar.

The large extent of information obtained to be set out in an Amended complaint was gathered after Third Party Defendant Eliot Bernstein had already filed an Answer and Counterclaim and after Plaintiffs had already filed their first Amended Complaint.

While this Court did not grant Third Party Defendant's petition for Injunctive relief under the All Writs Act and Anti-Injunction Act filed just 2 months ago in Feb. of 2016, this Court did not strike such pleading as was sought by Plaintiffs and which remains in the record. Said pleading provided a substantial factual background for the amendments sought by Third Party Defendant Eliot Bernstein. See, All Writs @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160224%20FINAL%20ESIGNED%20MOTION%20FOR%20INJUNCTION%20ECF%20STAMPED%20COPY%20COMBINED%20FILING.pdf>

The Plaintiffs and parties to be added on an amended complaint should not be benefitting by the very frauds alleged and thus, the likelihood of any real prejudice being established is non-existent. Third-Party Defendant Eliot Bernstein raised the necessity of adding some of the parties back into the case during the Summary Judgment proceedings last year and the parties at that time were well aware of the intention to amend the pleadings herein. As set out in the recent petition for injunction, Third-Party Defendant Eliot Bernstein has been occupied on an almost never-ending basis in the intervening months in responding to sham pleadings, repeated motions with improper notice, sued as Trustee of a Trust that does not exist, children placed in predatory guardianships under a Trust they are sued under that does not exist and otherwise responding to

sharp practices of Ted Bernstein and his Attorney Alan Rose and those acting in concert and thus any such delay in moving for this amendment is caused substantially by the fraudulent and improper conduct of the parties themselves.

The Trusts and Other Simon Bernstein created entities such as Bernstein Family

Investments, Bernstein Family Realty, Bernstein Holdings:

All of these entities to be added to an amended pleading are non-probate entities and are civil in nature. Part of the conspiracy alleged against Ted Bernstein and those parties acting in concert is a scheme to deny, lose, make unavailable and alter ALL “Original” documents such that Ted Bernstein himself admitted in an orchestrated pre-determined “one-day” “validity” hearing before Florida Judge John Phillips in Dec. of 2015 that he had never seen ANY of the “Originals” of the Trusts and at that same hearing Ted’s former attorney and former Co-Trustee and Co-PR of the Estate and Trust of Simon Bernstein, who had resigned after admitting to fraud and who admitted at the validity hearing to fraudulently creating a Shirley Bernstein Trust document, Robert Spallina, Esq., also claimed not to know where the original documents were at the time of the hearing. Spallina claiming he did not know where they were despite a court order that demanded his law firm turn over ALL records to the now dead successor Curator, Benjamin Brown, Esq., who upon receipt of the documents informed Defendant Eliot Bernstein that NO original documents relating to the Estates and Trusts or other documents of Simon and Shirley’s were originals, in defiance of the court order. Yet, in the First Amended Complaint filed by Adam Simon on behalf of Ted Bernstein in this action, **an affirmative representation was made to this Court** in such Amended Complaint that an “exhaustive” search for the Trust and Insurance documents from this action had been made by Ted Bernstein, Tescher and Spallina, the Simons and related parties as of January 2014. Such a representation asks this Court to

believe that NO Original document exists anywhere for now deceased Simon Bernstein who was a financially successful insurance salesman for 50 years using multiple attorneys and having record and files for decades, running certain of the trust companies that administered and sold the missing life insurance policy at the heart of this lawsuit all of which apparently seem to be lost with no explanation.

Many of the “copies” of said Trusts have references to Insurance and insurance proceeds. Several of the named Trusts such as the “Family Trusts” and Marital Trusts” and Trust for Eliot Bernstein and family and Jill Bernstein and Family and Lisa Friedstein and family were never produced or entered into the Florida proceedings whether by copy or original or any form at all and yet are alleged to have existed by the copies of other trusts produced. Nor were any of the instruments creating Bernstein Family Holdings and Bernstein Family Investments and Bernstein Family Realty ever produced at such Florida validity proceeding.

All such items should now be allowed to be added as parties to an Amended pleading to determine the proper Instruments and proper terms and conditions. Such an amendment is directly in support of determining the original insurance action herein and likely to yield further evidence to permit this Court’s path to judgement on the original action. See Exhibit A - Partial Parties and Entities to be added to Amended Complaint

Ted Bernstein

Third-Party Defendant Eliot Bernstein respectfully seeks to add claims against current party Ted Bernstein in the nature of conversion of assets, adding claims to tortious interference and delay of rights of inheritance and expectancy, breaches of fiduciary duties (if actually a proper fiduciary), conspiracy to deprive fundamental rights, due process and meaningful access

to the courts acting in concert with the County of Palm Beach and PBSO and state actors Judge Colin and Phillips.

**Tescher & Spallina, Kimberly Moran, Gutter Chaves Josepher Rubin Forman Fleisher
Miller PA F.K.A. Tescher Gutter Chaves Josepher Rubin Ruffin & Forman PA, the
County of Palm Beach & PBSO**

While Third-party Defendant Eliot Bernstein asserts that Hon. Judge St. Eve erred in dismissing Tescher & Spallina from this action, new evidence to support bringing these parties back in and added to an Amended pleading such as TS Bates Discovery obtained AFTER these parties were Dismissed by Judge St. Eve and referenced in the Feb. 2016 Petition for Injunction including but not limited to: July 1, 2010 Email to Chris Prindle showing fraud in claiming Spallina had “certified” Orders regarding the takeover of certain Trusts by Oppenheimer allegedly signed by Judge Colin and another Email of the same date by Spallina showing the “close” relationship he had with Judge Colin by claiming to a Stanford related partie Maggie Brown how he would “walk the orders through” the next week that Spallina was telling Prindle had already been signed and certified by the Court. Said information was never even discovered produced until mid to late 2014 and thus Eliot Bernstein had no opportunity to Discover such information at the time of the original Answer and Counterclaims.

Same with the June 2010 Petition allegedly filed by Spallina with Judge Colin regarding the Trusts moving from Stanford to Oppenheimer which again Eliot Bernstein never discovered or received or was produced until 2014 well after his original responsive pleading and after Plaintiff’s first Amended Complaint. Said Petition signed by Robert Spallina is instrumental in the claims with the County of Palm Beach and PBSO as direct claims of Fraud were made by Eliot Bernstein before both Judge Colin and the PBSO who sabotaged and spoiled any such

investigation against Spallina in this regard in denial of 14th Amendment rights and thus is supportive of the claims under 42 USC Sec. 1983. Eliot Bernstein obtained direct information from the PBSO after his original Answer and Counterclaims were filed in this action of Judge Colin's "involvement" and interference in the fraud investigations ongoing in his own Court. Sufficient information exists to plead claims under 42 USC 1983 naming the County of Palm Beach, PBSO Officers Panzer, Miller & Groover herein.

Oppenheimer, JP Morgan, Steve Lessne, Alan Rose, Gerald Lewin, Brian O'Connell, Joy Foglietta and the Ciklin law firm and Stanford and Oppenheimer entities:

Third-party Defendant Eliot I. Bernstein seeks to add said defendants for claims relating to conspiracy to deprive fundamental rights of due process and meaningful access to the Courts, tortious interference and delay in rights of inheritance and expectancy, breach of fiduciary duties, loss, concealment and destruction of evidence, conversion and waste of assets, and negligence. It is noted for this Court that on the date in Feb. 2016 when the Petition for an Injunction was presented to this Court and where it was not disclosed to this Court or myself that the dead body with gruesome gun-shot wounds to the head had been discovered just a day or so before at one of the property assets seeking to be enjoined, later that same day attorney Alan Rose acting with Ted Bernstein arranged the Probate proceedings with Judge Phillips which allegedly were for a Guardianship Proceeding to NOT be Electronically Recorded despite information from Court Administrative Officers that all GAL (Guardianship) proceedings were required to be electronically recorded. This Court is otherwise referred to those sections of the petition for injunctive relief for the primary factual predicate and background for this motion.

Jackson, Heritage, LaSalle, Reinsurance America, Bank of America

Third party Defendant Eliot Bernstein respectfully seeks leave to add such parties back to the action to afford complete relief amongst the parties and for claims relating to loss, destruction, concealment of evidence and records herein.

WHEREFORE, it is respectfully prayed for an Order granting Third-Party Defendant's motion for leave to amend the Counterclaims and Third-Party Complaint and responsive pleadings herein and for such other and further relief as may be just and proper.

Respectfully Submitted,

Date: April 29, 2016

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 29, 2016 I electronically filed the foregoing with the Clerk of the Court using CM/ECF and/or email. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

Third Party Defendant/Cross Plaintiff

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<p>Alan B. Rose, Esq. PAGE,MRACHEK,FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 arose@pm-law.com and arose@mrachek-law.com</p>	<p>Pamela Simon President STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>	<p>Estate of Simon Bernstein Personal Representative Brian M. O'Connell, Partner and Joielle Foglietta, Esq. Ciklin Lubitz Martens & O'Connell 515 N Flagler Drive 20th Floor West Palm Beach, FL 33401 boconnell@ciklinlubitz.com</p>
<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	<p>Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com</p>	<p>David B. Simon, Esq. #6205304 303 East Wacker Drive, Suite 2725 Chicago, Illinois 60601 Attorney for Plaintiffs (312) 819-0730</p>
<p>Michael Duane Sanders mds@pw- law.com, sjohnson@pw-law.com</p>	<p>Glenn E. Heilizer glenn@heilizer.com</p>	<p>John M. O'Halloran joh@mcveyparsky- law.com</p>

EXHIBIT A

1. Simon L. Bernstein Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
 2. Simon L. Bernstein Irrevocable Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
 3. Simon L. Bernstein Estate and Will of Simon L. Bernstein (2008) and its current and former trustees, fiduciaries and counsel;
 4. Simon L. Bernstein Estate and Will of Simon L. Bernstein (2012) and its current and former trustees, fiduciaries and counsel;
 5. Simon L. Bernstein Amended and Restated Trust Agreement (2012) and its current and former trustees, fiduciaries and counsel;
 6. Wilmington Trust 088949-000 Simon L. Bernstein Irrevocable Trust and its current and former trustees, fiduciaries and counsel;
 7. Estate and Will of Shirley Bernstein (2008) and its current and former trustees, fiduciaries and counsel;
 8. Shirley Bernstein Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
 9. Shirley Bernstein Irrevocable Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
 10. Simon Bernstein Irrevocable Insurance Trust dated 6/21/1995 (currently missing and legally nonexistent) and its current and former trustees, fiduciaries and counsel;
 11. Shirley Bernstein Marital Trust and Family Trust created under the Shirley Bernstein Trust (2008) and its current and former trustees, fiduciaries and counsel;
 12. S.B. Lexington, Inc. 501(C)(9) VEBA TRUST and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
 13. Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012 and its current and former trustees, fiduciaries and counsel;
 14. Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012 and its current and former trustees, fiduciaries and counsel;
 15. Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012 and its current and former trustees, fiduciaries and counsel;
 16. Eliot Bernstein Family Trust dated May 20, 2008 and its current and former trustees, fiduciaries and counsel;
 17. Daniel Bernstein Irrevocable Trust dated September 7, 2006 and its current and former trustees, fiduciaries and counsel;
 18. Jake Bernstein Irrevocable Trust dated September 07, 2006 and its current and former trustees, fiduciaries and counsel;

19. Joshua Z. Bernstein Irrevocable Trust dated September 07, 2006 and its current and former trustees, fiduciaries and counsel;
20. Traci Kratish, Fiduciary;
21. Christopher Prindle, personally;
22. Christopher Prindle, professionally;
23. Peter Montalbano, personally;
24. Peter Montalbano, professionally;
25. S.T.P. Enterprises, Inc., and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
26. S.B. Lexington, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
27. National Service Association, Inc. (of Illinois) and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
28. Life Insurance Concepts, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
29. LIC Holdings, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
30. LIC Holdings, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
31. Arbitrage International Management LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
32. Arbitrage International Marketing, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
33. Arbitrage International Holdings, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
34. National Services Pension Plan and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
35. Arbitrage International Marketing Inc. 401 (k) Plan and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns,

- Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
36. Bernstein Family Realty, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
 37. Bernstein Holdings, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
 38. Bernstein Family Investments, LLLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
 39. Legacy Bank of Florida and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
 40. Chicago Title Land Trust and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
 41. Wilmington Trust Company and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
 42. Janet Craig, personally;
 43. Janet Craig, professionally;
 44. Janet Craig, fiduciary;
 45. Huntington Worth, personally;
 46. Huntington Worth, professionally;
 47. Huntington Worth, fiduciary;
 48. GrayRobinson, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
 49. GUNSTER and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
 50. Mark R. Manceri, Esq., personally;
 51. Mark R. Manceri, Esq., professionally;
 52. Mark R. Manceri, Esq., P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;

53. Pankauski Law Firm PLLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
54. John J. Pankauski, Esq., personally;
55. John J. Pankauski, Esq., professionally;
56. Steven A. Lessne, Esq., personally;
57. Steven A. Lessne, Esq., professionally;
58. Kimberly Francis Moran, personally;
59. Kimberly Francis Moran, professionally;
60. Lindsay Baxley aka Lindsay Giles, personally;
61. Lindsay Baxley aka Lindsay Giles, professionally;

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
)
Plaintiff,)

**Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

v.)
)
HERITAGE UNION LIFE INSURANCE)
COMPANY,)
)
Defendant,)

**Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually, Pam Simon,
and Adam M. Simon
(Respondents)**

HERITAGE UNION LIFE INSURANCE)
COMPANY)
Counter-Plaintiff)

**RESPONSE TO ELIOT BERNSTEIN'S
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT**

v.)
)
SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)
)
Counter-Defendant)

and,)
)
FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)
_____)
ELIOT IVAN BERNSTEIN,)
Cross-Plaintiff)
v.)
TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)
Cross-Defendant)
and,)
PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)
Third-Party Defendants.)
_____)

NOW COMES RESPONDENTS, by and through their attorney, Adam M. Simon, and state in response to Eliot Bernstein's Motion for Leave to File an Amended Complaint as follows:

RESPONSE

1. Eliot's motion for leave to file an amended complaint should be denied because it is vexatious on its face.

Eliot's motion for leave to file an amended complaint is vexatious on its face as it attempts to name approximately 60 parties as defendants or third-party defendants. Eliot ignores disregards prior orders entered in the Probate court in Florida which ultimately resulted in the loss of Eliot's standing to participate in the Probate actions in Florida not only on his own behalf but also on behalf of his minor children. Orders entered by Hon. John L. Phillips on December 15, 2015 and April 8, 2016 in *Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dated 5/20/2008 v. Alexandra Bernstein, et. al.*, Case No. 502014CP003698, and *In Re Estate of Simon Bernstein*, Case No. 502012CP004391 (Cir. Ct. of Fifteenth Judicial Circuit, Palm Beach County, Florida).

(The Probate Orders are attached hereto as Ex. A and Ex. B.)

Why did Eliot lose standing to represent the interests of his own children? Because after an evidentiary hearing on the matter, the Judge Phillips found that Eliot was acting to the detriment of his own minor children and as a result appointed a guardian *ad litem* to act on their behalf. **(See Ex. B).** Clearly one of the motivations in Eliot seeking leave to file an amended complaint here is in furtherance of his efforts to avoid the effect of the Probate Orders.

Eliot also ignores prior Orders entered in the instant litigation including those (i) closing discovery [**Dkt. #123**] and (ii) dismissing Eliot's claims against parties he know seeks to re-file against such as former third-party defendants, Tescher and Spallina. [**Dkt. 106**], and (iii) admonishing Eliot to limit an "Omnibus Emergency Motion" to issues over which the Northern District has jurisdiction over. [**178**].

The claims Eliot seeks to reinstate against Tescher and Spallina are dilatory and likely barred as they are being brought more than two years after the Order dismissing them from the litigation. These same claims are futile for all of the reasons set forth in Judge Ste. Eve's Order. [**Dkt. 106**]. In fact, Judge Ste. Eve's reasoning provides a basis for denying Eliot's motion for leave to amend against all Third-Party defendants currently sued by Eliot in this litigation, and all parties he seeks to reinstate or add.

Like all vexatious litigants, Eliot's motion reflects his never-ending compulsive search for alternate theories and forums to re-litigate *ad nauseum* issues previously litigated and decided adversely to him in prior proceedings.

2. Eliot's motion for leave to file an amended complaint should be denied because it fails to attach the proposed amended complaint and fails to adequately describe the proposed amendments.

Eliot has failed to attach a proposed amended complaint to his motion. The motion itself is really nothing more than another one of Eliot's missives with no rational connection between thoughts that result in nothing more than faux conclusions of law.

Take for example Eliot's attempted linkage between a rather mundane motion for leave to withdraw as counsel for two parties filed by Adam Simon, and a tragic suicide of the buyer of the former personal residence of Simon Bernstein. Eliot alludes that these two events are somehow meaningful, but fails to provide an explanation or evidence of any nexus between the two. Eliot fails to even allege that any of the parties he references, Jill Iantoni, Lisa Friedstein and Adam Simon, all of whom reside in Illinois were even in the state of Florida anywhere near the time of this tragic death. Eliot also never mentions that Jill Iantoni, Lisa Friedstein or Adam Simon have ever met or spoken to this person prior to his death. Eliot makes absolutely no connection between these events and a cognizable claim.

Eliot fails to specify what legal claims he seeks to add and against which parties. More importantly he fails to specify how any of his ramblings amount to a set of facts which sets forth an actual claim for which relief can be granted against a specific party. In light of the Probate Orders entered and described above, it is almost certain any such claims would be futile, but in any case Eliot has failed to provide the substance of his proposed amendment such that this court could even make such a determination.

3. Eliot's motion for leave to file an amended complaint should be denied because the motion fails to satisfy the legal standards Eliot sets forth in his own motion.

Eliot's motion includes recitation of the following standard on motions for leave to amend, "In the absence of delay, undue prejudice to the party opposing the motions, or futility of the amendment, leave should be freely given." (Eliot's motion for leave, p.3). Eliot's efforts to add fifty plus parties and litigate issues not germane to the narrow issue

in this case, including those that have been previously decided in prior proceedings, will surely prejudice the existing parties to this litigation because of undue delay and needlessly increased costs.

Eliot's motion seeks to add or reinstate previously dismissed parties to litigation and re-open discovery in an interpleader action filed over three years ago involving a single non-probate asset where discovery has been closed for over one year. Eliot's thinly veiled allegations of a §1983 conspiracy involving the Florida Probate Court is actually no conspiracy at all but rather just a series of adverse rulings in the Probate Court that correctly determined (i) the validity of the testamentary documents at issue in Florida, (ii) that Ted Bernstein was a duly authorized Trustee of the various Trusts in Florida, and had not taken part in any wrongdoing alleged by Eliot; (iii) Eliot was not a beneficiary of the Trusts or Estates in Florida; and (iv) Eliot's children required a Guardian Ad Litem because of Eliot's persistent actions which adversely impacted his children's interests. **(Ex. A and Ex. B).**

Given the procedural history of both the instant litigation and the Probate action in Florida it is virtually certain any such amendments, even if they had been properly pled and timely, would be futile. For example, here Judge St. Eve has already dismissed the claims brought against Tescher and Spallina, and Eliot's rambling motion fails to set forth any specific new facts which entitle him to re-plead, and of course this is in addition to the fact that Eliot's claims against Tescher and Spallina were dismissed by Judge St. Eve over two years ago.

The same reasoning used by Judge St. Eve likely applies to all of Eliot's existing and proposed new claims as well. And that is, Eliot is not faced with any liability in the instant litigations so his efforts to bring cross-claims in this case against third parties when Eliot faces no liability for the third-party to share is misplaced. **[Dkt. 106]**.

4. Eliot's motion for leave to file an amended complaint should be denied because this court lacks subject-matter jurisdiction.

Eliot's motion is an improper attempt to use this U.S. District Court as a quasi-appellate court to circumvent Orders entered in the Probate action. Eliot seeks an alternate forum in an obvious attempt to re-litigate the exact same issues previously litigated in Florida over the last four years, and to try to regain standing in Probate proceedings where Eliot has none. This court has no subject-matter jurisdiction over the probate matters being litigated in Florida. **[178]**, and *Storm v. Storm*, 328 F.3d 941 (7th Cir., 2003).

And despite Eliot's representations to the contrary, all of Eliot's counterclaims, cross-claims, and third-party claims go well beyond the singular issue presented in the instant litigation which is the determination of the beneficiary of the Policy Proceeds.

Conclusion

For all the foregoing reasons, Eliot's motion for leave to file an amended complaint should be denied.

Respectfully submitted,

/s/ Adam Simon

Adam Simon, Esq.

#6205304

303 East Wacker Drive

Suite 2725

Chicago, Illinois 60601

(312) 819-0730

Attorney for Respondents

EXHIBIT A

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of his minor children D.B., Ja. B. and Jo. B.;
JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;
LISA FRIEDSTEIN, Individually, as Trustee f/b/o
Max Friedstein and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her
minor child, C.F.,

Defendants.

COPY

FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT

This cause came before the Court for trial on December 15, 2015, pursuant to the Court's
ORDER SETTING TRIAL on AMENDED COMPLAINT (DE 26) COUNT II dated September 24,
2015. The Court, having received evidence in the form of documents and testimony of witnesses,

having heard argument of counsel and *pro se* parties who wished to argue, and being otherwise fully advised of the premises, hereby enters a Final Judgment as to Count II of the Amended Complaint:

1. This is an action for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- A. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached to the Amended Complaint as Exhibit A~~3~~, *EX. P2 AT TRIAL*) JB
- B. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", attached to the Amended Complaint as Exhibit B~~3~~, *EX. P3 AT TRIAL*) JB
- C. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", attached to the Amended Complaint as Exhibit C~~3~~, *EX. P4 AT TRIAL*) JB
- D. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", attached to the Amended Complaint as Exhibit D~~3~~, *EX. P5 AT TRIAL*), *and* JB
- E. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", attached to the Amended Complaint as Exhibit E~~3~~, *EX. P1 AT TRIAL*) JB

(collectively, the "Testamentary Documents").

2. Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, and are valid and enforceable according to their terms.

3. The Court finds that Simon's Testamentary Documents were signed by Simon and Shirley's Testamentary Documents were signed by Shirley, in the presence of two attesting witnesses who signed in the presence of the testator and in the presence of each other. § 732.502, Fla. Stat.; § 736.0403(2)(b), Fla. Stat.

4. The Court finds the Testamentary Documents meet the requirements for self-proof, as specified in §732.503, Fla. Stat. Alternatively, the Testamentary Documents were properly admitted based upon the testimony of at least one of the attesting witnesses, which occurred. §733.201, Fla. Stat.

5. Based on the evidence presented, the Court finds that Plaintiff, Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents. ~~Indeed,~~ Ted S. Bernstein had never seen the documents before his father's death. ~~Moreover,~~ Ted S. Bernstein played no role in any questioned activities of the law firm Tescher & Spallina, PA, who represented Simon and Shirley while they were alive. There is no evidence to support the assertions that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided and abetted others in forging or fabricating documents. ~~Thus,~~ Ted Bernstein played no role in the preparation of any improper documents; the presentation of any improper documents to the Court; or any other improper act, contrary to the allegations of Eliot Bernstein, ~~made in the pleadings in this case or in various blogs and websites in which Eliot Bernstein has attacked the actions of Ted Bernstein.~~

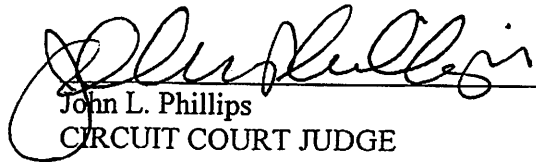
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6. Based on the evidence presented, the Court finds that an unauthorized version of the First Amendment to Shirley Bernstein Trust Agreement was prepared sometime after Simon died. This document (Pl. Ex. 6) was not signed by Shirley Bernstein and, therefore, is not an operative document.

7. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure, determining the validity of Testamentary Documents, denying any objection to the probate of Shirley's and Simon's Wills or the validity of the Trust Agreements, and determining which persons are entitled to receive distributions from these trusts and estates.

8. Based upon the rulings made by the Court in this trial of Count II, the Court reserves jurisdiction to determine the remaining issues in this action.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 16 day of December, 2015.


John L. Phillips
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

EXHIBIT B

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

IN RE: CASE NO. 502012CP004391XXXXNBIH
ESTATE OF SIMON L. BERNSTEIN,

_____ /

**ORDER APPOINTING GUARDIAN AD LITEM TO
REPRESENT THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN**

THIS CAUSE came before the Court for hearing on April 8, 2016, on Successor Trustee's *Motion for Appointment of a Guardian Ad Litem to Represent Interests of Eliot Bernstein's Children in this Estate* ("the Motion"). The Court, having reviewed the Motion and the record, having heard argument of counsel and/or the parties, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Simon L. Bernstein Amended and Restated Trust Agreement dated 7/25/12 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust.

2. The Court already has determined in the related matter of the Shirley Bernstein Trust that Eliot Bernstein should not be permitted to continue representing the interests of his minor children, because his actions have been adverse and destructive to his children's interest, resulting in appointment of a guardian ad litem.

3. Accordingly, the Court appoints DIANA LEWIS to act as Guardian ad Litem to advance and protect the interests of Jo.B, Ja.B and D.B. as the guardian sees fit. The Guardian Ad Litem will have full power and autonomy to represent the interests of the

children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B, Jo.B, and/or D.B.

4. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the Guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

5. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE AND ORDERED in Chambers, North County Courthouse on 4-8, 2016.


HONORABLE JOHN L. PHILLIPS

cc: All parties on the attached service list

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

Simon Bernstein Irrevocable
Insurance Trust Dtd 6/21/95, et al.,

Plaintiffs,

v.

Heritage Union Life
Insurance Co., et al.,

Defendants.

Case No. 13-cv-3643

Judge John Robert Blakey

Filers:
Eliot Ivan Bernstein, Pro Se

**THIRD-PARTY DEFENDANT ELIOT I. BERNSTEIN'S REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION FOR LEAVE TO AMEND COUNTERCLAIMS - THIRD
PARTY COMPLAINT**

1. Third-party Defendant Eliot I. Bernstein respectfully submits the following on information and belief and in Reply to the Opposition ("Response") papers filed by attorney Adam Simon on behalf of Plaintiff Ted Bernstein to a Motion for Leave to Amend Counterclaims.
2. It was anticipated that other Plaintiffs or parties may also file in Opposition to this Motion for Leave to Amend and I would submit a Reply to all parties at one time. However, as of today Wed., May 11, 2016, Adam Simon has filed the only opposition to this motion on behalf of Ted Bernstein.
3. While this Reply seeks to address all of the matters raised in the "Response" in Opposition, I first wish to address and clarify for this Court matters raised by Adam Simon in Number "2" where Adam Simon states as follows: "Take for example Eliot's attempted linkage between a rather mundane motion for leave to withdraw as counsel for two parties filed by Adam Simon,

and a tragic suicide of the buyer of the former personal residence of Simon Bernstein” (emphasis added).

4. First, nowhere in my Motion for Leave to Amend was it suggested that a Claim was being sought to be added based upon the actual death of one Mitchell B. Huhem, whose body was allegedly found in the 7020 Lions Head Lane, Boca Raton, Florida home of my deceased parents being found on or about Feb. 22nd or 23rd, 2016, 2 days or so before a Motion Hearing with your Honor on Feb. 25, 2016 on my application for Emergency Injunctive Relief under the All Writs Act and Anti-Injunction Act.
5. However, the discovery of this dead body and the timing of the motion by my sisters Jill Iantoni and Lisa Friedstein to no longer use Ted Bernstein’s counsel Adam Simon was referenced in the Procedural history of this action for just that, clear sequence and history particularly with open criminal investigations into various related matters herein.
6. As this Court may recall, the Lions Head Lane home itself in Boca Raton, Florida is not only a substantial claimed asset which I had moved this Court to restrain and enjoin but also is referenced in the Plaintiff’s Amended Complaint filed Jan. 13, 2014 here in this action as one of the alleged places where Plaintiff Ted Bernstein and his Counsel Adam Simon have represented to this Court as being one of the places searched for an Executed copy of the Trust which is the subject of this action stating in Par. 35 as follows: “Neither an executed original nor an executed copy of the BERNSTEIN TRUST Agreement has been located after diligent searches conducted as follows:
 - i) Ted Bernstein and other Bernstein family members of Simon Bernstein’s home and business office;”

7. Yet, despite this alleged “searching” of the Simon Bernstein home as of Jan. 3, 2014 finding no such executed original or copy of such Trust for this action to this very day, allegedly that is, nearly a year and a half later on or about May 20, 2015 just after Florida Probate Court Judge Colin mysteriously “recuses” after 2.5 years on the Probate case doing so within 24 hours of a mandatory Disqualification motion¹ I filed, Ted Bernstein’s other counsel. Alan Rose, magically allegedly finds executed “original” copies (alleged “duplicate” originals) of other Trusts involving my children and parents despite the fact that the PR of the Estate of Simon Bernstein by and through attorney Brian O’Connell’s law office with attorney Joy Foglietta had already fully inventoried all items in the home as of March 2015 and removed said items allegedly to storage. See, Petition for Injunction Paragraphs 95-120.
8. Of course in the prior alleged “searches” of the home that occurs by Ted Bernstein and others as referenced in his First Amended Complaint filed in this action, none of these “duplicate originals” now magically found by Alan Rose had apparently turned up, nor had these “duplicate originals” turned up by the complete Inventory by Brian O’Connell’s office as PR, allegedly that is.
9. Ted Bernstein’s counsel Alan Rose then proceeded to send through the Electronic mails and wires an email on such date describing the magical find and attaching “copies” of the alleged “duplicate” originals in further attempts to extort, coerce and wrongfully extract actions to agree in the related Trust and Estate matters, **yet never provided the alleged actual original duplicate copies or the actual original documents which he and his client Ted claim not to possess for Inspection or Review prior to an alleged pre-determined one day “validity” trial later held in Dec. 2015.**

¹ May 14, 2015 Motion for Disqualification Judge Martin Colin
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20ECF%20STAMPED%20COPY.pdf>

10. I respectfully draw the Court's attention to Adam Simon's affirmative representation in the recent filed Response before this Court that the death of Mitchell Huhem was **"a tragic suicide"** and note that nowhere in this filing does Adam Simon or Ted Bernstein provide any basis of such knowledge, yet represents this to the Court as if it is fact just like Adam Simon and Ted Bernstein filed with this Court claiming Ted Bernstein as "Trustee" of the Trust in this case yet NEITHER party had seen such trust, can produce such Trust, or have stated the basis for falsely filing as if this was a fact.
11. I also respectfully remind this Court that at no time on Feb. 25th, 2016 during the hearing on my Emergency Petition for Injunctive relief which included the 7020 Lions Head Lane home did either Adam Simon or Ted Bernstein disclose to this Court that a dead body had just been found at the home with alleged gunshot wounds to the head so gruesome that family members were not allowed to view the body of the deceased as alleged by the sisters of Mitchell Huhem.
12. I can affirmatively represent to this Court that as of April 16, 2016, the Palm Beach Sheriff's Office still had an "Open" Investigation into the alleged Suicide as I personally received a phone call from Detective Max-Carlos A. Perez-Pizarro who specifically was seeking information about the death and further stated that the Palm Beach Sheriff's Office was also investigating the fraudulent deed and shell company and real estate transaction involving the Lions Head lane home involving both Ted Bernstein and his counsel Alan Rose, See, Petition for All Writs Act Injunction Paragraphs 146-153..
13. I can also state to this Court upon information and belief with the source being a direct family member (sister) of deceased Mitchell Huhem that the PBSO had informed them that the family would be notified when the Investigation was closed and that as of yesterday, Tuesday

May 10, 2016 the family member sister reports she was directly told by a Supervisor in the PBSO Central Records Unit that the Status of the Case had now suddenly changed to “Blocked” Status and the case is Not “Open” nor “Closed” and that “Blocked” meant no one internally could access the Case files and further stated that one of the possible reasons a case could become “Blocked” is if an Outside Agency like the State’s Attorney’s Office was reviewing the case or if a new lead had developed on what happened.

14. I can further say upon information and belief from the Mitchell Huhem family members (sisters) that as of this Tuesday, May 10, 2012 the PBSO still had not interviewed them for alleged multiple contradictions in the storyline provided by Mitchell Huhem’s wife Deborah Huhem in the days after the body was discovered and further that Ted Bernstein had claimed to one sister that he was supposed to be meeting with Mitchell Huhem on the morning the body was allegedly discovered and that Ted Bernstein portrayed himself as a “close friend” of Mitchell Huhem’s, yet according to the sister the PBSO had not even interviewed Ted Bernstein about the case as of March 10, 2016.
15. Ted Bernstein’s counsel, Alan Rose, however, had claimed in an Electronic mail (email) sent to myself along the wires dated March 10, 2016 in part as follows: “Neither Ted nor anyone else on your mother's side of this sale knew or needed to know about the buyer.”
16. Yet, pictorial evidence is available showing Ted Bernstein and Mitchell Huhem together for Thanksgiving Dinner in Nov. of 2015 and according to Mitchell Huhem’s sister, Mitchell’s wife was “staying” with Ted Bernstein and Debbie Bernstein at their intra-coastal home in Florida in the days after the body was allegedly discovered, Mitchell Huhem’s wife Deborah had waited approximately 15-20 hours to even notify any of Mitchell’s blood relative family members including the sisters and Mitchell’s mother that he was even deceased, Deborah

Huhem was constantly on the phone with attorney Laurence Pino who was directly involved in setting up the fraudulent shell company that had allegedly taken the Deed to the Lion's Head home by Deed signed by Ted Bernstein and Alan Rose, and Laurence Pino was directing or advising Deborah Huhem to Deny family members access to the Lions Head home to see the scene of the event and further denied the family members permission to view the body.

17. According to the Mitchell Huhem sister's, ultimately after the Mother flew in the next day she insisted seeing the Lions Head Home and scene where graphic photos of a pool of blood was found in the garage and Boxes upon boxes were found everywhere in the garage and elsewhere and while it is not known if any of the boxes contained Records and Documents from Simon Bernstein's life and business, one of the sisters did indicate that at least a Medical Record of Simon Bernstein's had been found in the upstairs part of the home near a closet.
18. Thus, I bring these matters to the Court's attention not only to correct the factual record as I understand it as there is no "Official" finding of "Suicide" to my knowledge by the PBSO currently, but also alerting the Court in advance that further investigation by authorities could yield new evidence which may be relevant to this action as one of the many outstanding items is the whereabouts and proper Inventory and documentation of where All of Simon Bernstein's Business records, files and documents have gone. See Petition for All Writs.
19. I remind this Court that after my father Simon Bernstein had passed away and allegations of being "poisoned" had been made at the Hospital, that Ted Bernstein indicated he and his lawyers would be handling the matters with the police and autopsy, that when I went to my father's home at Lions Head I discovered his entire hard drive of files and business records has been wiped clean and missing, that when the PBSO did eventually come by on the claim

of my father being “poisoned” the PBSO did not even enter the Home to check all the Medications and related matters in the home while I was present and claimed they would return to do so, and after that I was never allowed entry to the home again and have not been in the home since that time in 2012, that I later found the PBSO had instead docketed the investigation of “poisoning” as a “Hospital Medical Records Check”, and further that I was personally present at the home **but Court ordered by Judge Colin to remain outside** in on or about March of 2015 when Joy Foglietta, attorney of the Brian O’Connell firm as PR of the Estate were doing their “complete” Inventory and removal of ALL such items, records, etc in the home.

20. Thus, there may be relevance as far as pattern and practice by the PBSO in “skewing”, “sabotaging” and “steering” investigations as it relates to the investigation of the Mitchell Huhem matter.

Reliance on Judge St. Eve Order to determine Futility is Misplaced and rests on erroneous

Facts

21. Respectfully, the reliance by Adam Simon and Ted Bernstein on Hon. Judge St. Eve’s Order dismissing the Tescher and Spallina law firm to determine that any amendment would be futile is misplaced and is based upon an erroneous state of facts.
22. This Order cited to Plaintiff’s First Amended Complaint in Paragraph 8 as follows: “Eliot Bernstein, the sole non-consenting adult child of Simon Bernstein, holds the remaining twenty percent of the beneficial interest in the BERNSTEIN TRUST, and is representing his own interests and has chosen to pursue his own purported claims, pro se, in this Matter.”
23. These are erroneous facts.

24. I had no knowledge that Ted Bernstein or any of the parties had filed in the instant lawsuit and action until I was brought in as a Defendant by the insurer, thus these facts relied upon were erroneous.
25. Instead at the time I was waiting to see a Florida filed action to determine a Trust since the Trust was allegedly lost.
26. But for the fraudulent filing by Ted Bernstein and Adam Simon, I would have and should have been a proper Plaintiff in a properly filed action to determine a proper Trust, Trustee and policy herein and should not have been “cornered” and had my rights to seek proper Counter-claims against proper parties restricted or limited in the manner in which this Order did cornering me in as Defendant in an impleader action and the Plaintiffs should not be benefitting by their own fraud in this regard.
27. Moreover, the case cited and relied upon by Hon. Judge St. Eve is a District court case from New York which does not appear to be binding and also should not be used to achieve such a substantial prejudice and injustice.
28. Other Federal Rules of Civil Procedure apply to adding parties and claims.
29. FRCP Rule 13 on Counterclaims and Cross-claims provides in part “ **h) Joinder of Additional Parties.** Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.”
30. With respect to Heritage, Jackson and the Re-Insurer, these parties should not have been released from the case in the absence of a produced policy and contract. This court simply does not know if the amount deposited into the Court is correct without a contract.

31. "It is well established that a party to a contract which is the subject of the litigation is considered a necessary party." Ryan v. Volpone Stamp Co., Inc., 107 F. Supp.2d 369, 387 (S.D.N.Y. 2000); see also Global Discount Travel Services, LLC v. Trans World Airlines, Inc., 960 F. Supp. 701, 707-708 (S.D.N.Y. 1997).
32. These parties should be added back in either under Rule 19(a) as necessary parties or Rule 20 as part of the same transaction and occurrence and common nucleus of operative facts.
33. The same should apply to Tescher & Spallina either as necessary parties or under the same transaction and occurrence and common nucleus of operative facts.
34. Tescher and Spallina were the Estate planners for Simon and Shirley Bernstein who "should have" knowledge and possession of any such Trust and insurance policies and contracts.
35. New facts have emerged well beyond the time of my original Answer and as recently as Dec. 2015 when shown that Ted Bernstein and his counsel Alan Rose were "working with" Robert Spallina as their primary "witness" in an orchestrated "one-day" pre-determined "validity" trial where Robert Spallina directly provides false and misleading testimony about his status of pleading to criminal conduct for Insider Trading and SEC Consent Order and by the discovery that no one knows where the "original" files are and that Ted Bernstein somehow has never seen an "original" Trust in his entire time as alleged "Trustee" either in this case or any of the Florida cases.
36. In Rotter v Leahy, 93 F. Supp.2d 487, 499 (S.D.N.Y. 2000) it was determined that in order to successfully oppose a motion to amend based upon undue delay, the moving party "must make a showing of substantial and undue prejudice resulting from the delay".
37. Neither Ted Bernstein nor Adam Simon have shown "substantial" and "undue prejudice" resulting from any delay by Eliot Bernstein and in fact, an Amended complaint will amply

show that virtually all such delay has been caused by the actions of Ted Bernstein and those acting in concert with him in this case which appears nothing more than a fraud inside a fraud in a coverup of a fraud between both this action and actions in Florida and that Eliot Bernstein has had exhaustive amounts of time spent peeling apart and deciphering all such fraud where it has already been established that a Notary employee directly under Robert Spallina's control, one Kimberly Moran, had committed 6 counts of forgery in parts of the Florida case, where Robert Spallina has admitted to the PBSO of fraudulently altering part of Shirley's Trust and then admitting on the stand to dropping such fraudulent document in the US mails to one of my attorneys who was bullied off the case.

Recent Misleading and False Actions before this Court by Adam Simon and Ted Bernstein

38. Even Adam Simon's actions in the Response by claiming my "standing" has been removed in Florida is itself a false and misleading action in material respects.
39. Adam Simon would have this Court believe that such a finding came after a Due Process hearing but nothing could be further from the truth.
40. In fact, such finding by one John Phillips came at what is called a "UMC" hearing, Uniform Motion Calendar hearing which **by its very nature is NON-evidentiary** and thus not as the result of some fully litigated due process hearing.
41. The UMC hearings are set up for basic non-contested matters and the like and each party is only give 5 minutes to speak and by the words at Judge Phillips own web page are Non-evidentiary. See, "**PROBATE/GUARDIANSHIP U.M.C. HEARINGS (Non-evidentiary matters and/or ex-parte matters)** are held on Tuesdays and Thursdays in Courtroom #3 at 8:30 a.m.". **<http://15thcircuit.co.palm-beach.fl.us/web/judge-phillips/divinstructions>**

42. And to further show the fraud upon fraud and lack of due process, such UMC hearing came up after a pre-determined “Validity” trial which was limited to one day only regardless of what evidence or testimony came up and was Expressly not a “Construction” hearing in relation to the construction and meaning of any such instruments but only if somehow “validly” executed.
43. Thus there had been no such Construction hearing at the time my standing was removed at a non-evidentiary hearing and still has been no such Construction hearing and where the validity hearing was based on copies only of testamentary documents and no originals were produced and no one knew exactly where they were despite Tescher and Spallina being court ordered to turn over ALL records and documents upon their resignation upon admission of fraudulently creating a Shirley Trust document.
44. As shown in the Petition for All Writs Injunction, the parties went into “high gear” after this Court closed submissions on the Summary Judgement to then obtain Orders in the Florida Court on Validity which I had been seeking for 2 years prior and as alleged these were orchestrated in violation of Florida’s own Civil procedure and constitutional due process for the very purpose of obtaining collateral advantage in this case as well while simultaneously blocking Discovery, production compliance and necessary witnesses as the Court simply would not allow the time beyond “one-day” and was further orchestrated so that no attorney was present to Cross-examine any of Ted Bernstein’s witnesses as Creditor William Stansbury’s attorney Peter Feaman kept saying the PR attorney Brian O’Connell would be present at the “validity” trial as the PR had filed a Motion to remove Ted Bernstein as counsel but at the last moment made some type of “agreement’ with Ted Bernstein and thus the Estate

was not even represented by counsel at any such "validity" hearing where estate of Simon documents were being validated in a non legally related Shirley Trust hearing.

45. That a stay for minor children to have counsel was denied at the hearing and the minor children and other qualified beneficiaries were not present or represented.
46. Moreover, the Trusts and other items sought to be determined and added here as amended claims include Trusts that were never produced or determined in Florida in any event.
47. Still and all more important as Ted Bernstein's counsel Alan Rose has only recently admitted that the very Trust that he sued me under for the Validity trial itself is a Trust that did not exist, never existed, still does not exist all of which has relevance to the claims to be added herein.
48. "Delay must be considered in context; not all delay will result in denial of a motion to amend."Oneida Indian Nation of New York State v. County of Oneida, N.Y., 199 F.R.D. 61, 74(N.D.N.Y. 2000); see also Messier v. Southbury Training School,No. 3:94-CV-1706, 1999 WL 20907, at *3 (D. Conn. Jan. 5, 1999) ("mere delay, absent a showing of bad faith or undue prejudice, does not provide a basis for denial of leave to amend") (citing State Teachers Retirement Bd. v. Fluor Corp., 654 F.2d 843, 856(2d Cir. 1981)); See The Randolph Foundation v Duncan, 00 Civ. 6445 (AKH)(THK) (S.D.N.Y. Jan 09, 2002).
<https://casetext.com/case/the-randolph-foundation-v-duncan>
49. I can provide to this Court exhibits showing approximately 112 Email Communications alone from Ted Bernstein's counsel Alan Rose where approximately 40 of which had Attached documents just during the timeframe of when this Court closed Summary Judgment until approximately the time of my All Writs filing in Feb. 2016, plus approximately 200 emails during the same time from the Florida Courts and 80+ submissions by PR Brian O'Connell.

50. It is asserted that this alone is likely part of a scheme to keep me occupied so that getting to the business of filings to advance my rights and claims becomes impossible but nonetheless this provides further context for any such "delay" particularly where there are multiple investigations and fraud is widespread and has to be considered in each and every submission and document and filing etc.
51. From the Randolph Foundation case above, see also Schwimmer v. Guardian Life Ins. Co., No. 93 Civ. 0428 (RWS), 1996 WL 146004, at *3 (S.D.N.Y. Apr. 1, 1996) (granting leave to amend where amendment was "not so frivolous or outlandish to render it futile," even though amended complaint would not with stand summary judgment motion); Hall v. Prendergast, No. 91 Civ. 3829 (CSH), 1992 WL 88143, at *4(S.D.N.Y. Apr. 22, 1992) ("A proposed amendment is considered futile if it is `clearly frivolous.'" (citation omitted); Lerman v. Chuckleberry Publishing, Inc., 521 F. Supp. 228, 231 (S.D.N.Y. 1981) ("[U]ness a proposed claim is clearly frivolous or legally insufficient on its face, the court should not consider the merits of a claim or defense on a motion to amend.").
52. My submissions on the motion and Petition for All Writs outline at least a colorable claim.
53. I specifically sought instruction from the Court as to whether the Proposed Amended Complaint was necessary for filing this motion.
54. If failure to attach such a Proposed Amended Complaint is the basis to deny my motion, I respectfully seek leave to cure by submitted the Proposed Amendment but respectfully seek an additional 30 days or reasonable timeframe as I am also facing several deadlines in the Florida Appeals Court where I am also facing hurdles of being denied proper access to the full Record and additional hurdles on indigency etc and at least seek a reasonable time to submit such Proposed Amendment.

55. Further, the *Storm v Storm* (7th Circuit) case cited by Plaintiff is used improperly and was also decided before the US Supreme Court's Decision in *Marshall v Marshall* 547 U.S. 293; 126 S. Ct. 1735; 164 L. Ed. 2d 480; 2006.
56. In fact the *Marshall v Marshall* US Supreme Court case itself refers to the *Storm v Storm* case in further stated, "As the Court of Appeals correctly observed, Vickie's claim does not "involve the administration of an estate, the probate of a will, or any other purely probate matter." 392 F.3d at 1133. Provoked by Pierce's claim in the bankruptcy proceedings, Vickie's claim, like Carol Ankenbrandt's, alleges a widely recognized tort. See *King v. Acker*, 725 S.W.2d 750, 754 (Tex. App. 1987); Restatement (Second) of Torts § 774B (1977) ("One who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that [s]he would otherwise have received is subject to liability to the other for loss of the inheritance or gift."). Vickie seeks an in personam judgment against Pierce, not the probate or annulment of a [***36] will. "
57. Even the *Storm v. Storm* 7th Circuit case recognized that a Federal court could hear claims of neglect and mismanagement against a Trustee or PR from a probate case or will.
58. And Trusts being civil are non-probate in the first place.
59. A party may obtain a federal judgment that the party has a valid claim against an estate for a specific amount of money. However, the federal court may not order payment of the money, because that would be an assumption of control over property under probate. *Turton v. Turton*, 644 F.2d 344 (5th Cir. 1981).
60. A party may bring an action in federal court against a former personal representative for civil theft, RICO violation, breach of fiduciary, conversion, and tortious interference.
- Glickstein v. SunBank/Miami*, 922 F.2d 666, 672, n. 13 (11th Cir. 1991).

61. Thus, having shown at least a colorable claim, Plaintiff's have not met their burden of showing substantial and undue prejudice or futility.

WHEREFORE, Third-Party Defendant Eliot I. Bernstein respectfully requests that this Court deny the opposition by Plaintiffs and grant the Motion for Leave to Amend and should a proposed Amended Complaint be required seeks a reasonable time to submit based upon the Appeals schedule in Florida and for such other and further relief as may be just and proper.

Respectfully Submitted,

Date: May 12, 2016

/s/ Eliot Ivan Bernstein

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 12, 2016 I electronically filed the foregoing with the Clerk of the Court using CM/ECF and/or email. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing

generated by CM/ECF or in some other authorized manner.

/s/ Eliot Ivan Bernstein

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**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.: 1:13-cv-03643

Honorable John Robert
Blakey

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, May 12, 2016:

MINUTE entry before the Honorable John Robert Blakey: Case called for motion hearing on 5/12/2016 and no one appeared, either initially or when the case was recalled at the end of the Court's status and motion call. Neither side advised the Court of any conflict. Status hearing reset to 5/26/2016 at 9:45 AM in Courtroom 1725. Failure to appear on 5/26/2016 may result in dismissal of this case for want of prosecution pursuant to Local Rule 41.1. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

**Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

**Filers: Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually,
Pamela B. Simon, Adam M. Simon,
David B. Simon, The Simon Law Firm,
STP Enterprises, Inc. (“Movants”).**

**MOVANTS’ MOTION FOR SUMMARY
JUDGMENT AS TO ELIOT
BERNSTEIN’S COUNTERCLAIMS,
CROSS-CLAIMS AND THIRD-PARTY
CLAIMS (“ELIOT’S CLAIMS”)**

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

)

NOW COMES the above-named Counterdefendants, Cross-defendants and Third-party defendants (“Movants”), by and through their undersigned counsel, and pursuant to Fed. R. Civ. P. 56(a) and Local Rule 56.1, move the Court for summary judgment as to each and every one of Eliot’s counterclaims, cross-claims and third-party claims. In support thereof Movants state as follows:

1. The undisputed facts and evidence supporting this motion are set forth more fully in the accompanying Statement of Material Undisputed Facts Pursuant to Local Rule 56.1(a); the Appendix of Exhibits; and referenced in the Memorandum of Law in Support of Movant’s Motion for Summary Judgment.

2. This action was originally filed by the Simon Bernstein Irrevocable Insurance Trust dated 6/21/95 against Heritage Union Life Insurance Company (the “Insurer”) in the Circuit Court of Cook County. The Action related to Plaintiff’s claim to certain death benefit proceeds (“Policy Proceeds”) payable under a life insurance policy (the “Policy”) insuring the life of Simon Bernstein who passed away in September of 2012.

3. The Insurer removed this Action from Cook County to the Northern District, and filed an Interpleader Action.

4. The Insurer did not dispute its liability under the Policy. Instead, the Insurer sought to interplead conflicting claimants to the Policy Proceeds, and deposit the Policy Proceeds with the Registry of the Court. The Insurer accomplished this and after depositing the Policy Proceeds, the Insurer was dismissed from the litigation.

5. The remaining parties have had access to the Policy records and all documents produced in this litigation, and have had ample time to conduct discovery. The fact discovery deadline set by Judge St. Eve passed on January 9, 2015. **[Dkt. #123]**

6. Movants have established in their memorandum of law that there is no triable issue of fact and all Movants are entitled to summary judgment as to Eliot's Claims as a matter of law. This motion shall be dispositive as to all of Eliot's Claims and will significantly narrow the focus of these proceedings to where it belongs – determining the beneficiary of the Policy Proceeds that remain on deposit with the Registry of the Court.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that the Court and enter an Order as follows:

- a) granting Movants' motion for summary judgment in its entirety as to all of Eliot's Claims;
- b) entering summary judgment for each Movant as to Eliot's Claims, and terminating Movants on the docket, *but solely* in their capacities as counterdefendants, cross-defendants, or third party defendants to Eliot's Claims;
- c) terminating Eliot Bernstein as a party to these proceedings in all capacities in which he appears on the docket;
- d) granting Movants such further relief as this court may deem just and proper.

Respectfully Submitted,

/s/ Adam M. Simon
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Attorney for Movants

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
)
Plaintiff,)

**Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

v.)
)
HERITAGE UNION LIFE INSURANCE)
COMPANY,)
)
Defendant,)

**Filers: Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually,
Pamela B. Simon, Adam M. Simon,
David B. Simon, The Simon Law Firm,
STP Enterprises, Inc. (“Movants”).**

HERITAGE UNION LIFE INSURANCE)
COMPANY)
)
Counter-Plaintiff)

**MOVANTS’ STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF THEIR MOTION FOR
SUMMARY JUDGMENT**

v.)
)
SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)
)
Counter-Defendant)

and,)
)
FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)
_____)

Movants, pursuant to Rule 56 and Local Rule 56.1, submit the following statement of uncontested material facts, including an appendix of exhibits hereto, in support of their motion for summary judgment as to Eliot's counterclaims, cross-claims and third-party claims ("Eliot's Claims").

I. THE PARTIES

The following is a review of the Parties (and entities named as potential parties) listed on the civil docket for this matter:

1. Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the "Bernstein Trust"), is an irrevocable life insurance trust formed in Illinois as further described below. The Bernstein Trust is the original Plaintiff that first filed this action in the Circuit Court of Cook County. The Insurer then filed a notice of removal to the Northern District of Illinois. The Bernstein Trust has also been named as a Counterdefendant to Eliot's Claims. The Bernstein Trust is represented by counsel, Adam M. Simon. **(Ex. 1, Aff. of Ted Bernstein, ¶21)**

2. Bank of America, N.A. ("Bank of America"), was named a party to Heritage's counterclaim for Interpleader. Bank of America was terminated as a co-Plaintiff on January 13, 2014, and the Insurer voluntarily dismissed Bank of America as a Third-Party Defendant on February 14, 2014. **(Dkt. #97; Ex. 1, Aff. of Ted Bernstein, ¶22)**

3. Eliot Bernstein ("Eliot") was named a Party by virtue of Heritage's counterclaim for Interpleader, and Eliot filed third-party claims against several Parties described herein making Eliot a Third-Party Plaintiff as well ("Eliot's Claims"). Eliot is the third adult child of Simon Bernstein. Eliot is representing himself, and/or his children, pro se in this matter. **(Ex. 1, Aff. of Ted Bernstein, ¶23)**

4. United Bank of Illinois, now known as PNC Bank, was named as a third-party defendant in Heritage's counterclaim for Interpleader. PNC Bank was served on August 5, 2013, and has never filed an appearance or answer. **(Dkt. #25; Ex. 1, Aff. of Ted Bernstein, ¶24)**

5. "Simon Bernstein Trust, N.A." was named a Party to Heritage's counterclaim for interpleader. "Simon Bernstein Trust, N.A.". There are no Policy records produced by the Insurer indicating that a policy owner ever submitted a beneficiary designation naming Simon Bernstein Trust, N.A. as a beneficiary of the Policy. No one has submitted a claim to the Policy Proceeds with the Insurer on behalf of an entity named "Simon Bernstein Trust, N.A.". **(Ex. 2, Aff. of Don Sanders, ¶69 and ¶78)**

6. Ted Bernstein, as Trustee, of the Bernstein Trust retained Plaintiff's counsel and initiated the filing of this Action. Ted Bernstein, is also a co-Plaintiff, individually, and has been named as a Counter-defendant and Third-Party Defendant to Eliot's Claims. Ted Bernstein is the eldest of the five adult children of Simon Bernstein. Ted Bernstein is represented by counsel, Adam M. Simon. **(Ex. 1, Aff. of Ted Bernstein, ¶25)**

7. First Arlington National Bank was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. First Arlington National Bank was never served by Heritage, and instead Heritage served JP Morgan Chase Bank as First Arlington Bank's alleged successor and JPMorgan Chase Bank was substituted as a party in place of First Arlington National Bank on 10/16/2013. **(Dkt. #44; see also JP Morgan Chase Bank at Par. 12 below; Ex. 1, Aff. of Ted Bernstein, ¶26)**

8. Lisa Sue Friedstein is a co-Plaintiff and has been named as a third-party defendant to Eliot's Claims. Lisa Sue Friedstein is the fifth adult child of Simon Bernstein. Lisa Sue

Friedstein is now appearing pro se, and was formerly represented by counsel, Adam M. Simon.
(Ex. 3, Aff. of Lisa Friedstein, ¶2, ¶3, ¶6 and ¶23)

9. Jill Marla Iantoni is a co-Plaintiff and has been named as a third-party defendant to Eliot's Claims. Jill Marla Iantoni is the fourth adult child of Simon Bernstein. Jill Marla Iantoni is appearing pro-se and was formerly represented by counsel, Adam M. Simon. **(Ex. 4, Aff. of Jill Iantoni, ¶2, ¶3, ¶6 and ¶23)**

10. Pamela Beth Simon is a co-Plaintiff and has been named as a third-party defendant to Eliot's Claims. Pamela Beth Simon is the second adult child of Simon Bernstein. Pamela Beth Simon and is represented by counsel, Adam M. Simon. **(Ex. 5, Aff. of Pam Simon, ¶2, ¶3, ¶6 and ¶38.)**

11. Heritage is the successor life insurer to the original insurer, Capitol Banker Life, that originally issued the Policy in 1982. Heritage was terminated as a party on February 18, 2014 when the court granted Heritage's motion to dismiss itself from the Interpleader litigation after having deposited the Policy Proceeds with the Registry of the Court pursuant to an Agreed Order. The amount of the Policy Proceeds (plus interest) on deposit with the Registry exceeds \$1.7 million. **(Dkt. #101 and Ex. 1, Aff. of Ted Bernstein, ¶30)**

12. J.P. Morgan Chase Bank, N.A., ("J.P. Morgan") was named as a third-party Defendant by virtue of Heritage's counterclaim for Interpleader. In its claim for Interpleader, Heritage named J.P. Morgan, as a successor to First Arlington National Bank (described above). J.P. Morgan filed an appearance and answer to Heritage's counterclaim for Interpleader in which it disclaimed any interest in the Policy Proceeds. J.P. Morgan then filed a motion for judgment

on the pleadings to have itself dismissed from the litigation, and the court granted the motion. As a result, J.P. Morgan was terminated as a party on March 12, 2014. **(Dkt. #105;**

Ex. 1, Aff. of Ted Bernstein, ¶31)

13. William Stansbury filed a motion to intervene in this action, but his motion to intervene was denied, and he was terminated as a non-party intervenor on January 14, 2014.

(Dkt. #74; Ex. 1, Aff. of Ted Bernstein, ¶32)

14. Adam M. Simon is counsel himself, and for the Bernstein Trust, Ted Bernstein (individually and as trustee), Pamela B. Simon, David B. Simon, The Simon Law Firm, and STP Enterprises, Inc. four of the five adult children of Simon Bernstein. Adam M. Simon was named a third-party defendant to Eliot's Claims. Adam M. Simon is the brother-in-law of Pamela B. Simon, and the brother of David B. Simon. **(Ex. 1, Aff. of Ted Bernstein, ¶33)**

15. National Service Association, Inc. (of Illinois) was a corporation owned by the decedent, Simon Bernstein. According to the public records of the Secretary of State of Illinois, National Service Association, Inc. (of Illinois) was dissolved in October of 2006. There is no record of Eliot having obtained service of process upon National Service Association, Inc. because it is dissolved and has been for over 7 years. **(Ex. 1, Aff. of Ted Bernstein, ¶34)**

16. Donald R. Tescher, Esq. was named a Third-Party Defendant to Eliot's Claims. Donald R. Tescher is a partner of in the firm of Tescher & Spallina. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's claims on March 17, 2014. **(Dkt. #106; Ex. 1, Aff. of Ted Bernstein, ¶35)**

17. Tescher and Spallina, P.A. was a law firm whose principal offices were formerly in Palm Beach County, FL. Tescher and Spallina, P.A. was named a Third-Party Defendant to Eliot's Claims. Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this

matter when the court granted his motion to dismiss as to the Eliot's Claims. (**Dkt. #106; Ex. 1, Aff. of Ted Bernstein, ¶36**)

18. The Simon Law Firm was named a Third-Party Defendant to Eliot's Claims. The Simon Law Firm is being represented by counsel, Adam M. Simon.

19. David B. Simon is the husband of Pam Simon, and the brother of counsel, Adam M. Simon and was named a Third-Party Defendant to Eliot's Claims. David B. Simon is being represented by counsel, Adam M. Simon. (**Ex. 6, Aff. of David Simon, ¶20 and ¶29**)

20. S.B. Lexington, Inc. was a corporation formed by Simon Bernstein. According to the records of the Secretary of State of Illinois, S.B. Lexington, Inc. was dissolved on April 3, 1998. (**Ex. 1, Aff. of Ted Bernstein ¶39, Dep. of David Simon, p. 51:13-18**)

21. S.B. Lexington, Inc. Employee Death Benefit Trust (the "VEBA Trust") was named a Third-Party Defendant by virtue of Eliot's Claims, and was a Trust formed by Simon Bernstein in his role as principal of S.B. Lexington, Inc. The VEBA Trust was formed pursuant to I.R.S. Code Sec. 501(c)(9) as a qualified Employee Benefit Plan designed to provide a death benefit to certain key employees of S.B. Lexington, Inc. The VEBA was dissolved in 1998 concurrently with the dissolution of S.B. Lexington, Inc. (**Ex. 7, Dep. of David Simon, p. 51:13-18; Ex. 30, Aff. of Ted Bernstein, ¶40**)

22. Robert Spallina, Esq. was named a Third-Party Defendant to Eliot's Claims. Robert Spallina is a partner of in the firm of Tescher & Spallina, P.A. Robert Spallina was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014. (**Dkt. #106; Ex. 1, Aff. of Ted Bernstein, ¶41**)

23. S.T.P. Enterprises, Inc. was named a Third-Party Defendant to Eliot's Claims. S.T.P. Enterprises, Inc. has filed an appearance and responsive pleading and is represented by counsel, Adam M. Simon. **(Dkt. #47; Ex. 5, Aff. of Pam Simon, ¶25)**

24. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) was a Florida corporation formed by Simon L. Bernstein. National Service Association, Inc. (Florida) was named a Third-Party Defendant in Eliot's Claims. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) dissolved in 2012. **(Ex. 1, Aff. of Ted Bernstein, ¶42).**

25. Benjamin Brown as Curator of The Estate of Simon Bernstein filed a motion to intervene in this litigation. The court granted the motion to intervene on July 28, 2014, and as a result the Estate became a third-party claimant in the litigation. **(Dkt. #121).** Subsequently, Brian O'Connell as successor Curator and *Administrator Ad Litem* of the Estate of Simon Bernstein filed a motion to substitute for Benjamin Brown, and the court granted the motion November 3, 2014. For purposes of this motion, Movants refer to this party as the "Estate of Simon Bernstein" or the "Estate". The Estate is represented by the law firm of Stamos & Trucco in this matter. **(Dkt. #126; Ex. 1, Aff. of Ted Bernstein ¶43-¶44)**

II. THE POLICY AND POLICY PROCEEDS

26. In 1982, Simon Bernstein, as Insured, applied for the purchase of a life insurance policy from Capitol Bankers Life Insurance Company, issued as Policy No. 1009208 (the "Policy"). A specimen policy and a copy of the Schedule Page of the Policy are included in Movant's Appendix to the Statement of Facts. **(Ex. 2, Aff. of Don Sanders at ¶38, ¶39, ¶48, ¶52; See Ex. 14).** The amount of the Policy Proceeds (plus interest) on deposit with the Registry

of the Court exceeds \$1.7 million. (**Dkt. #101 and Ex. 1, Aff. of Ted Bernstein, ¶30**). The Policy defines “Beneficiary” as follows:

A Beneficiary is any person *named on our* [the Insurer’s] *records* to receive proceeds of this policy after the insured dies. There may be different classes of Beneficiaries, such as primary and contingent. These classes set the order of payment. There may be more than one beneficiary in a class. Unless you provide otherwise, any death benefit that becomes payable under this policy will be paid in equal shares to the Beneficiaries living at the death of the Insured. Payments will be made successively in the following order:
(emphasis added)

- a. Primary Beneficiaries.
- b. Contingent Beneficiaries, if any, provided no primary Beneficiary is living at the death of the Insured.
- c. The Owner or the Owner’s executor or administrator, provided no Primary or Contingent Beneficiary is living at the death of the Insured.

Any Beneficiary may be named an Irrevocable Beneficiary. An irrevocable beneficiary is one whose consent is needed to change that Beneficiary. Also, this Beneficiary must consent to the exercise of certain other rights by the Owner. We discuss ownership in part 2. (**SoF, ¶26; Ex. 7 at bates no. JCK00101**)

III. MOVANTS’ CLAIMS TO THE POLICY PROCEEDS

27. Plaintiff’s claims to the Policy Proceeds are based on their allegations that the five adult children of decedent, INCLUDING ELIOT, are the beneficiaries of The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, and that this same Trust is the named beneficiary of the Policy Proceeds at issue (the “Stake”). (**Ex. 8, Plaintiff’s First Amended Complaint**).

IV. ELIOT’S NON-EXISTENT CLAIM TO THE POLICY PROCEEDS

28. Eliot Bernstein filed counterclaims, third-party claims and cross-claims in this litigation (“Eliot’s Claims”). (**Ex. 9, Eliot’s Claims**).

29. The pleading setting forth Eliot’s Claims—not including exhibits—is seventy-two pages long and consists of one hundred and sixty-three separate paragraphs. Eliot’s Claims are devoid

of any allegation or supporting facts to show that either Eliot or his children were ever named a beneficiary of the Policy Proceeds. (**Ex. 9, Eliot's Claims**).

30. This is confirmed by the 30(b)(6) witness designated by the Insurer affirming that no Owner of the Policy ever submitted any change of beneficiary forms which were received by the Insurer that designated Eliot, or any of Eliot's children as a beneficiary of the Policy. (**Ex. 2, Aff. of Don Sanders, ¶¶65-¶68**).

V. ELIOT'S STATUS VIS-À-VIS THE ESTATE OF SIMON BERNSTEIN

31. The case styled as In Re Estate of Simon L. Bernstein, has been pending in the Probate Division of the Palm Beach County Circuit Court in Florida since 2012. In Re Estate of Simon L. Bernstein, No. 502012CP004391XXXNBIH.

32. A related case styled as Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dtd 5/20/2008 v. Alexandra Bernstein, et. al., has been pending in the same court before the same judges since 2014 involving matters related to a testamentary trust formed by Shirley Bernstein – Simon Bernstein's spouse -- prior to her death. Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dtd 5/20/2008 v. Alexandra Bernstein, et. al, No. 502014CP003698XXXXNBIJ. For purposes of this motion, the actions pending in Palm Beach County are referred to as the "Probate Action(s)".

33. On December 15, 2015, after a trial was held in the Probate Actions, where Eliot Bernstein appeared and represented himself *pro se*, Judge John L. Phillips entered an Order including the following:

- a. This was a "Final Judgment" on Count II of the Amended Complaint;
- b. A trial was held on December 15, 2015 pursuant to the Court's Order setting trial on Amended Complaint Count II;

- c. The Court received evidence in the form of documents and testimony of witnesses;
 - d. The Court heard argument from counsel and pro se parties who wished to argue;
 - e. The Court found that five testamentary documents, including the Will of Simon Bernstein and a Simon Bernstein Amended and Restated Trust Agreement dated July 25, 2012 are “genuine and authentic, and are valid and enforceable according to their terms.”
 - f. That based on evidence presented, “Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents...Ted S. Bernstein played no role in any questioned activities of the law firm of Tescher & Spallina, P.A., who represented Simon and Shirley when they were alive. There is no evidence to support the assertion of Eliot Bernstein that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided or abetted others in forging or fabricating documents. The evidence shows Ted Bernstein played no role in the preparation of any improper documents, the presentation of any improper documents to the Court, or any other improper act, contrary to the allegations of Eliot Bernstein.
 - g. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure...” (**Ex. 10, Probate Order of 12/15/15, *Ted Bernstein, as Trustee of Shirley Bernstein Trust Agreement v. Alexandra Bernstein...Eliot Bernstein, et. al. No. 502014CP003698.* (ADD TRANSCRIPT SHOWING ELIOT ATTENDED?).**)
34. On April 8, 2016, Hon. John. L Phillips entered another Probate Order including the following findings:
- a. “This court determined after a trial held on December 15, 2015 that the beneficiaries of The Simon L. Bernstein Amended and Restated Trust Agreement dated 7/25/12 (the “Trust”) are Simon Bernstein’s ‘then living grandchildren’. Under that ruling, Simon’s children -- including Eliot – are not beneficiaries of the Trust.” (insert footnote explaining that the Trust is beneficiary of the Will”).
 - b. The Court has already determined in the related matter of the Shirley Bernstein Trust that Eliot Bernstein should not be permitted to continue representing the interests of his minor children, because his actions have been adverse and destructive to his children’s interest resulting in appointment of a guardian ad litem.

- c. Accordingly, the Court appoints Diana Lewis to act as Guardian ad Litem to advance and protect the interests of Jo.B, Ja.B and D.B. as the guardian sees fit. The Guardian ad Litem will have full power and autonomy to represent the interests of the Children of Eliot Bernstein, subject to the jurisdiction and review of the court.” (Ex. 11, Order entered 4/8/16, *Eliot Bernstein, et. al v. Theodore Stuart Bernstein, et al., No. 502015CP001162*).” **(Ex. 11, Probate Order entered 4/8/16)**

35. In this same Probate Order, Judge Philips admonished Eliot that the court intended to use its “*full measure of its coercive powers*” to ensure Eliot’s, and anyone acting in concert with Eliot, non-interference with the guardian ad litem appointed for Eliot’s children. (emphasis added). **(Ex. 11, Probate Order entered 4/8/16)**. For purposes of this motion, the two orders attached as Ex. 10 and Ex. 11 are referred to as the “Probate Orders”.

VI. THE ESTATE’S INTEREVENOR COMPLAINT

36. In its intervenor complaint, the Estate of Simon Bernstein, asserts that it has an interest in the policy because “Plaintiff cannot prove the existence of a Trust document; cannot prove that a trust was ever created; thus, cannot prove the existence of the Trust nor its status as purported beneficiary of the Policy. In the absence of a valid Trust and designated beneficiary, the Policy Proceeds are payable to the Petitioner [Estate].....”. **(Ex. 12 at ¶12, Estate’s Intervenor Complaint)**.

VII. THE INSURER'S INTERPLEADER ACTION

37. A copy of the Insurer's Interpleader Action is included in Movant's Appendix to its Statement of Undisputed Facts as **(Ex. 13, Insurer's Interpleader Action)**. In its Interpleader Action, the Insurer alleges that it failed to pay the Bernstein Trust's death claim because the claimants could not produce an original or copy of an executed trust agreement, and because the Insurer received a letter from Eliot setting forth a potentially conflicting claim. **(Ex. 13 at ¶22)**.

Respectfully submitted,

/s/ Adam Simon
Adam Simon, Esq.
#6205304
303 East Wacker Drive
Suite 2725
Chicago, Illinois 60601
(312) 819-0730
Attorney for Plaintiffs-Movants

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)

**Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

**Filers:
Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually,
Pamela B. Simon,
David Simon, Adam Simon,
The Simon Law Firm, and STP
Enterprises, Inc. (“Movants”).**

**APPENDIX TO PLAINTIFFS’,
COUNTERDEFENDANTS AND THIRD
PARTY DEFENDANTS
STATEMENT OF UNDISPUTED
MATERIAL FACTS IN SUPPORT OF
THEIR MOTION FOR
SUMMARY JUDGMENT**

N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)
_____)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)
_____)

Movants, pursuant to Local Rule 56.1, submit the following appendix to their statement of uncontested material facts in support of their motion for summary judgment:

EXHIBIT #	DESCRIPTION
1	Affidavit of Ted Bernstein
2	Affidavit of Don Sanders
3	Affidavit of Lisa Friedstein
4	Affidavit of Jill Iantoni
5	Affidavit of Pam Simon
6	Affidavit of David Simon
7	Deposition of David Simon
8	Plaintiff's First Amended Complaint
9	Eliot Bernstein's Answer, Counterclaims, Cross-claims, and Third-party claims
10	Probate Order entered 12/15/15 by Hon. John L. Phillips
11	Probate Order entered 4/08/16 by Hon. John L. Phillips
12	Estate Intervenor Complaint
13	Insurer's Interpleader Complaint
14	Specimen Life Insurance Policy

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95,
by Ted S. Bernstein, its Trustee, Ted S.
Bernstein, an individual,
Pamela B. Simon, an individual,
Jill Iantoni, an individual and Lisa S.
Friedstein, an individual.

Plaintiff,

v.

HERITAGE UNION LIFE INSURANCE
COMPANY,

Defendant,

HERITAGE UNION LIFE INSURANCE
COMPANY

Counter-Plaintiff

v.

SIMON BERNSTEIN IRREVOCABLE
TRUST DTD 6/21/95

Counter-Defendant

and,

FIRST ARLINGTON NATIONAL BANK
as Trustee of S.B. Lexington, Inc. Employee
Death Benefit Trust, UNITED BANK OF
ILLINOIS, BANK OF AMERICA,
Successor in interest to LaSalle National
Trust, N.A., SIMON BERNSTEIN TRUST,
N.A., TED BERNSTEIN, individually and
as purported Trustee of the Simon Bernstein

Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland

Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)

ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)

TESCHER & SPALLINA, P.A.,)

DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)

both Professionally and Personally,)

LISA FRIEDSTEIN, JILL IANTONI)

S.B. LEXINGTON, INC. EMPLOYEE)

DEATH BENEFIT TRUST, S.T.P.)

ENTERPRISES, INC. S.B. LEXINGTON,)

INC., NATIONAL SERVICE)

ASSOCIATION (OF FLORIDA),)

NATIONAL SERVICE ASSOCIATION)

(OF ILLINOIS) AND JOHN AND JANE)

DOES)

Third-Party Defendants.)

AFFIDAVIT OF TED BERNSTEIN

I, Ted Bernstein, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Boca Raton, County of Palm Beach, State of Florida and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My legal name is Ted Stuart Bernstein. I most often go by the name Ted Bernstein. I am also known as Ted S. Bernstein. I have also been referred to by the nickname "Theo" by friends and family.
3. I have been employed in the life insurance industry since 1980. I have been a licensed life insurance agent in Illinois since at least 1980, and in Florida since 2000.
4. When I use the term "Affidavit of Don Sanders" I mean that certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.

13. When I use the term “Policy Proceeds”, I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.
14. When I use the term “Proceeds on Deposit”, I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers’ Complaint for Interpleader.
15. When I use the term “Policy Records”, I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term “Litigation”, I mean the above-captioned litigation.
17. When I use the term “VEBA”, I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I am currently employed as President of Life Insurance Concepts, Inc. (“LIC”), a life insurance brokerage based in Boca Raton, FL.
19. I have been employed by LIC (or its predecessor) for the past 15 years, and have been employed in the life insurance industry for approximately 30 years.
20. From 2001 to 2012, my father, Simon Bernstein and I worked together at LIC, and shared office space in Boca Raton, FL.
21. Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 (“Bernstein Trust”), is an irrevocable life insurance trust formed in Illinois as further described below. The Bernstein Trust is the original Plaintiff that first filed this action in the Circuit Court of Cook County. The Insurer then filed a notice of removal to the Northern District of Illinois. The Bernstein Trust has also been named as a Counter-defendant to the EB Claims. The Bernstein Trust is represented by counsel, Adam M. Simon.
22. Bank of America, N.A. (“Bank of America”), was named a party by virtue of Heritage’s counterclaim for Interpleader. Bank of America was terminated as a co-Plaintiff on January 13, 2014, and the Insurer voluntarily dismissed Bank of America as a Third-Party Defendant on February 14, 2014.
23. Eliot Bernstein (“Eliot”) was named a Party by virtue of Heritage’s counterclaim for Interpleader, and Eliot filed third-party claims against several Parties described herein making Eliot a Third-Party Plaintiff as well. Eliot is the third adult child of Simon Bernstein. Eliot is representing himself, and/or his children, pro se in this matter.

24. United Bank of Illinois, was named as a Third-Party Defendant in Heritage's counterclaim for Interpleader. United Bank of Illinois has never filed an appearance or answer.
25. I, Ted Bernstein, as Trustee, of the Bernstein Trust retained Plaintiff's counsel and initiated the filing of this Action. I am is also a co-Plaintiff, individually, and has been named as a Third-Party Defendant to the Eliot's Claims. I am the eldest of the five adult children of Simon Bernstein. I am represented by counsel, Adam M. Simon.
26. First Arlington National Bank was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. First Arlington National Bank was never served by Heritage, and instead Heritage served JP Morgan Chase Bank as First Arlington Bank's alleged successor and JPMorgan Chase Bank was substituted as a party in place of First Arlington National Bank on 10/16/2013. (See ¶31 below).
27. Lisa Sue Friedstein is a co-Plaintiff and has been named as a Third-Party Defendant to the Eliot's Claims. Lisa Sue Friedstein is the fifth adult child of Simon Bernstein. Lisa Sue Friedstein is represented by counsel, Adam M. Simon.
28. Jill Marla Iantoni is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot's Claims. Jill Marla Iantoni is the fourth adult child of Simon Bernstein. Jill Marla Iantoni is represented by counsel, Adam M. Simon.
29. Pamela Beth Simon is a co-Plaintiff and has been named as a Third-Party Defendant to the EB Claims. Pamela Beth Simon is the second adult child of Simon Bernstein. Pamela Beth Simon is represented by counsel, Adam M. Simon.
30. Heritage is an Insurer as defined above. Heritage was terminated as a party on 2/18/2014 when the court granted Heritage's motion to dismiss itself from the Interpleader litigation after having deposited the Policy Proceeds with the Registry of the Court.
31. J.P. Morgan Chase Bank, N.A., ("J.P. Morgan") was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. In its claim for Interpleader, Heritage named J.P. Morgan Chase Bank, N.A., as a successor to First Arlington National Bank (described above). J.P. Morgan Chase Bank, N.A. filed an answer to Heritage's counterclaim for Interpleader in which it disclaimed any interest in the Policy Proceeds. J.P. Morgan then filed a motion for judgment on the pleadings to have itself dismissed from the litigation as party and the court granted the motion. As a result, J.P. Morgan was terminated as a party on March 12, 2014.

32. William Stansbury filed a motion to intervene in this action, but his Motion to Intervene was denied and he was terminated as a non-party intervenor on January 14, 2014.
33. Adam M. Simon is counsel for the Bernstein Trust and the Consenting Children as defined below. Adam M. Simon is not counsel for Eliot Bernstein whom has chosen to represent himself Pro Se in this matter. Adam M. Simon was named a Third-Party Defendant to Eliot's Claims, and represents himself with regard to Eliot's claims. Adam M. Simon is the brother-in-law of Pamela Beth Simon, and the brother of David B. Simon.
34. National Service Association, Inc. (of Illinois) was a corporation owned by the decedent, Simon Bernstein and was named a Third-Party Defendant to Eliot's Claims. According to the public records of the Secretary of State of Illinois, National Service Association, Inc. (of Illinois) was dissolved in October of 2006. (*See Ex. 21*)
35. Donald R. Tescher, Esq. was named a Third-Party Defendant by virtue of the EB Claims. Donald R. Tescher is a partner of in the firm of Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014.
36. Tescher and Spallina, P.A. is a law firm whose principal offices are in Palm Beach County, FL. Tescher and Spallina, P.A. was named a Third-Party Defendant to Eliot's Claims. Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to the Eliot's Claims on March 17, 2014.
37. The Simon Law Firm was named a Third-Party Defendant to Eliot's Claims. The Simon Law Firm is being represented by counsel, Adam M. Simon.
38. David B. Simon is the husband of Pamela Beth Simon, and the brother of counsel, Adam M. Simon and was named a Third-Party Defendant to Eliot's Claims. David B. Simon is being represented by counsel, Adam M. Simon.
39. S.B. Lexington, Inc. was a corporation formed by Simon Bernstein. According to the records of the Secretary of State of Illinois, S.B. Lexington, Inc. was voluntarily dissolved on April 3, 1998. (*See Ex. 9*).

40. S.B. Lexington, Inc. Employee Death Benefit Trust (the "VEBA Trust") was named a Third-Party Defendant to Eliot's Claims, and was a Trust formed by Simon Bernstein in his role as principal of S.B. Lexington, Inc. The VEBA Trust was formed pursuant to I.R.S. Code Sec. 501(c)(9) as a qualified Employee Benefit Plan designed to provide a death benefit to certain key employees of S.B. Lexington, Inc. The VEBA was dissolved in 1998 upon dissolution of S.B. Lexington, Inc.
41. Robert Spallina, Esq. was named a Third-Party Defendant to Eliot's Claims. Robert Spallina is a partner of in the firm of Tescher & Spallina, P.A. Robert Spallina was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014.
42. National Service Association, Inc. (Florida) was named a Third-Party Defendant to Eliot's Claims. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) was a Florida corporation and was dissolved in 2012. (*See Ex. 22*)
43. Benjamin Brown as Curator of The Estate of Simon Bernstein filed a motion to intervene in this litigation. The court granted the motion to intervene on July 28, 2014, and as a result the Estate became a third-party claimant in the litigation.
44. Subsequently, Brian O'Connell as successor Curator and Administrator Ad Litem of the Estate of Simon Bernstein filed a motion to substitute for Benjamin Brown, and the court granted the motion November 3, 2014.
45. According to the Policy Records, the Policy was issued by Capitol Bankers in 1982. I have reviewed and made myself familiar with the Policy Records which start with bates no. JCK000001 and end at bates no. JCK001324.
46. I have also reviewed and made myself familiar with Plaintiff's document production made pursuant to Fed. R. Civ. P. 26. A true, accurate and complete set of copies of those documents were served upon the other parties to this Litigation and were stamped with bates no. BT000001-BT000112.
47. Following the death of Simon Bernstein, I participated in and conducted diligent searches of Simon Bernstein's home, office and condominium all located in Palm Beach County, Florida. All of the records I located pertaining to the Policy and/or Bernstein Trust were turned over to Simon Bernstein's attorneys, whose names are Robert Spallina and Donald Tescher.
48. I am aware that the documents produced by Plaintiffs in this matter also contain documents located by David Simon and Pamela Simon in their offices in Chicago, Illinois.

49. As of the date of this Affidavit, no documents that I am aware of have been located and/or produced in this Litigation by any Party that appear to be the original Policy contract.
50. As of the date of this Affidavit, no documents that I am aware of have been produced in this Litigation by any Party that appear to be executed originals or executed copies of:
- (a) the "S.B. Lexington Employee Death Benefit Trust"; or
 - (b) the "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995", or
 - (c) any purported trust named the "Simon Bernstein Trust, N.A."
51. From my review of the records, on the date of issuance the sum insured (or death benefit) of the Policy was \$2 million. (*See Ex. 5 at Schedule Page, bates no. JCK001021*).
52. The Insurer produced a document that is titled "Financial Activity from Issue" and references the Policy number. (*See Ex. 1.*)
53. The financial activity report produced by Insurer indicates that the amount of the Policy Proceeds at the time of the Insured's death was \$1,689,070.00. (*See Ex. 1, at bates no. JCK0010201*).
54. Plaintiffs have submitted a copy of the receipt from the Registry of the Court for the Northern District of Illinois (the "Registry") which reflects a deposit of the Policy Proceeds, a total of \$1,703,567.09 deposited by the Insurer on June 26, 2013. (*See Ex. 2*).
55. According to the receipt, this deposit represented the Policy Proceeds of \$1,689,070.00, less a deduction for a policy loan, plus interest paid from the date of Simon Bernstein's death until the date of deposit with the Registry. I concur with the calculation of the Policy Proceeds and that the amount reflected on the receipt evidences the Insurers payment of the Policy proceeds pursuant to its Interpleader Action. (*See Ex. 2*)
56. According to the Part I of the application for the Policy, the Policy Owner at issuance was "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (*See Ex. 3*)
57. According to Part I of the application, the beneficiary at issuance was designated as follows: "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (*See Ex. 3*)
58. According to Part I of the application, Simon Bernstein's employer at the time of issuance was S.B. Lexington, Inc. and his title was listed as Chairman of the Board. (*See Ex. 3*)

59. During the application process, the Insurer conducted a routine underwriting investigation of Simon Bernstein prior to approving his policy. Part of that investigation was conducted by a company called Equifax, which is a company widely used in the insurance industry for underwriting investigations. In the Equifax report, the purpose of the insurance being provided by the Policy was stated as follows: "The beneficiary of this policy is the First Arlington National Bank, trustee of the S.B. Lexington, Inc. employee death benefit trust. The insurance will be paid to the trust, and the trust will determine the manner in which the benefits are to be paid and to whom it will be paid. Normally, benefits are paid to family members." (See Ex. 20)
60. In 1982, the year the Policy was issued, I shared office space with Simon Bernstein in Chicago, IL and can confirm that at that time, Simon Bernstein was employed by S.B. Lexington, Inc., which was a life insurance brokerage located in Chicago, IL.
61. In the early 1980's, while I was sharing office space with Simon Bernstein and S.B. Lexington, Inc., I was a licensed insurance agent and participated in the marketing of qualified employee benefit plans for closely held corporations. The plans were qualified as Voluntary Employee Benefit Associations under I.R.S. Code Sec. 501(c)(9). The S.B. Lexington VEBA was designed to insure the lives of S.B. Lexington employees and the ultimate beneficiaries of the death benefit was each insured employee's designated beneficiary.
62. Simon Bernstein whom was also a licensed insurance agent also marketed the VEBA Plans on behalf of S.B. Lexington, Inc.
63. In my experience as an insurance agent, and more specifically in my experience with the sales of life insurance policies issued through a Voluntary Employee Benefit Association, the original of the life insurance policy would be delivered by the insurer to the insurance agent whom would then deliver it to the policy to the owner of the policy as listed on the application. On the application, the initial owner was listed as First Arlington National Bank as Trustee for the S.B. Lexington Employee Death Benefit Trust.
64. In late 1982, First Arlington National Bank was located in Arlington Heights, Illinois. First Arlington National Bank was the Trustee of the VEBA and was thus acting on behalf of the VEBA as Owner of the Policy. In my experience the insurer would have delivered the original Policy to the agent whom would then deliver the Policy to the original Owner. The agent whom signed the application for the Policy was my father Simon Bernstein whose offices were located in Chicago, Illinois. The delivery of the Policy to the Owner would have occurred in Arlington Heights, Illinois.

65. A document produced by Plaintiffs is a copy of a form entitled S.B. Lexington, Inc. Employee Death Benefit Plan and Trust Beneficiary Designation for plan member, Simon Bernstein (the "VEBA Beneficiary Designation"). (See Ex. 4)
66. Having worked for my father and with my father for many years, I have seen his signature on a multitude of occasions and am very familiar with it. I recognize the two signatures on Ex. 4 as the signatures of my father, Simon Bernstein.
67. The VEBA Beneficiary Designation form is dated "8-26-95", and in it Simon Bernstein designates the "Simon Bernstein Irrevocable Insurance Trust" as his beneficiary to receive the death benefit under the VEBA. (See Ex. 4)
68. A document bearing bates no. JCK1098-JCK1117 produced by the Insurer is a specimen policy form for the Policy. On page JCK001099, the specimen policy includes the product name "CURRENT VALUE LIFE". A document produced by the Insurer bearing bates no. JCK001021 is a copy of the Schedule Page that was included with the Policy. The Schedule Page indicates the Policy was a "Current Value Life" plan issued on December 27, 1982, insuring the life of Simon Bernstein with a "sum insured" of \$2 million. (See Ex. 5).
69. A document produced by the Insurer bearing bates no. JCK001023 through JCK001024 is a copy of a Current Value Life, Statement of Policy Cost and Benefit Information which is an illustration of projected values and benefits of the Policy. This Statement of Policy Cost and Benefit Information indicates on its face that it was produced on the issue date of the Policy, December 27, 1982. (See Ex. 6).
70. On or about June 5, 1992, a letter was submitted on behalf of the Policy Owner informing the Insurer that LaSalle National Trust was being appointed as successor trustee. On June 17, 1992, the Insurer acknowledged the change of ownership and designated the Policy Owner on its records as LaSalle National Trust, N.A., as Successor Trustee. (See Ex. 7).
71. The Policy records indicate that on or about November 27, 1995, Capitol Bankers received a "Request Letter" signed by LaSalle National Trust, N.A. in their capacity as Trustee, as Policy Owner, and the Request Letter contained the following requested changes to the Policy:
- (a) LaSalle National Trust, N.A. as Trustee was designated as the primary beneficiary of the Policy; and
 - (b) The Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995 was designated as the contingent beneficiary. (See Ex. 8)

72. Though the name of the Trust on the Request Letter was set forth as stated in Par. 69(b) above, it was apparently abbreviated upon input into the Insurer's systems as Simon Bernstein Ins. Trust Dated 6/21/95. (*See Ex. 8*)
73. On November 27, 1995, Capitol Bankers sent correspondence to LaSalle National Trust N.A., as Successor Trustee acknowledging the changes in beneficiaries. (*See Ex. 8*)
74. On April 3, 1998, S.B. Lexington was voluntarily dissolved. (*See Ex. 9*)
75. Upon the dissolution of S.B. Lexington, Inc., the VEBA was also dissolved and the ownership of the Policy was changed in April of 1998. According to the Policy Records and the Aff. of Don Sanders, in April of 1998, LaSalle National Trust, as successor Trustee submitted a change of owner which designated Simon Bernstein as the Owner of the Policy. (*See Aff. of Don Sanders at ¶61 and Ex. 10*)
76. After reviewing the Policy Records, and the Affidavit of Don Sanders, I concur with Don Sanders that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (*See Ex. 8 and Aff. of Don Sanders, ¶56*)
77. According to the Insurer's pleading of its Interpleader Action, following the death of Simon Bernstein, the Insurer received conflicting claims to the death benefit proceeds. The Insurer received claims on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 and a conflicting claim in the form of a letter from Eliot Bernstein. (*See Ex. 25 at p. 3*)
78. Eliot Bernstein's wife is named Candice Bernstein, and they have three children named Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein.
79. According to the Policy Records and Aff. of Don Sanders, no one named Eliot Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (*Aff. of Don Sanders at ¶65*)
80. According to the Policy Records and Aff. of Don Sanders, no one named Joshua Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (*Aff. of Don Sanders at ¶66*)
81. According to the Policy Records and Aff. of Don Sanders, no one named Jacob Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (*Aff. of Don Sanders at ¶67*)

82. According to the Policy Records and Aff. of Don Sanders, no one named Daniel Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (**Aff. of Don Sanders at ¶68**)
83. According to the Policy Records and Aff. of Don Sanders, no Owner of the Policy ever submitted a beneficiary designation which designated Simon Bernstein Trust, N.A. as a beneficiary of the Policy. (**Aff. of Don Sanders at ¶69**).
84. According to the Policy Records, no Owner of the Policy ever submitted a beneficiary designation which designated “Simon Bernstein’s estate”, “the Estate of Simon Bernstein” or “the Estate” as beneficiary.
85. The last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured is Bates No. JCK000370. The primary beneficiary designation is “LaSalle National Trust, N.A., Trustee”, and the contingent beneficiary is “Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995”. (*See Aff. of Don Sanders at ¶72 and Ex. 8 all 4 pages*).
86. According to the Policy Records, the last change of Owner submitted on the Policy prior to the death of the insured was on or about April 3, 1998. (*See Aff. of Don Sanders and Ex. 11*).
87. According to the Policy Records and the Aff. of Don Sanders, the Insurer received no notices of claims from any of the following individuals or entities:
- a) The VEBA;
 - b) Any of the Bank Trustees of the VEBA;
 - c) Adam Simon;
 - d) David Simon;
 - e) The Simon Law Firm ; or
 - f) STP Enterprises, Inc.

(**See Aff. of Don Sanders at ¶77**).

88. In 1995, I was sharing office space with Simon Bernstein in Chicago, IL. My sister, Pam Simon, and brother-in-law, David Simon also shared office space with us. In the summer of 1995, Simon Bernstein discussed with me that he was forming a life insurance trust for the Policy, and that I would be named one of the trustees for the life insurance trust. He also indicated that my mother, Shirley Bernstein would be named the initial trustee.

89. Prior to Shirley Bernstein's passing on December 8, 2010, I had never been asked to exercise any powers on behalf of the Bernstein Trust as Trustee, and I believed that Shirley Bernstein was then acting as Trustee.
90. My father, Simon Bernstein, passed away less than two years after my mother, and during that time prior to Simon Bernstein's passing, I was not asked or required to exercise any powers as Trustee of the Bernstein Trust.
91. A copy of the Death Certificate of Simon Bernstein is attached hereto. (*See Ex. 12*).
92. In 2011, the Policy lapsed due to a missed premium payment.
93. In 2011, I assisted my father with completing the necessary paperwork and underwriting required by the Insurer to reinstate the Policy. (*See Ex. 13*).
94. Approximately one year before his death, my father took the necessary administrative steps and paid the required premium, and the Policy was reinstated by the Insurer. (*See Ex. 14*).
95. During the reinstatement process in 2011, my father reinstated the Policy without making any changes to the Owner and Beneficiary of the Policy.
96. On or about July 25, 2012, my father executed his last Will which has been filed and is being administered in Probate Court in Palm Beach County, Florida. A true and accurate copy of the Will as filed with the Clerk of the Court in Palm Beach County is included in Movant's Appendix to its Statement of Undisputed Facts. In his Will at ¶9, Simon Bernstein expressly reaffirmed his beneficiary designations made under any insurance contract. (*See Ex. 24 at ¶9*).
97. Following the death of my father, my sister, Pamela Simon, and brother-in-law, David Simon conducted searches of their office files and records, and David Simon located two unexecuted drafts of the Bernstein Trust in their offices. One of the unexecuted drafts was found on David Simon's computer database which dates back to 1990's when David Simon, Pamela Simon, and Simon Bernstein shared office space in Chicago, Illinois. **Ex. 15** includes a printout of metadata from the computer file for this draft of the Bernstein Trust indicating it was last modified on June 21, 1995. (*See Ex. 15 and Aff. of D. Simon*),
98. A second draft of the Bernstein Trust was located as a hard copy inside a file folder within the stored files of David Simon. (*See Ex. 16 and Aff. of D. Simon*).

99. According to the drafts of the Bernstein Trust, and the facts surrounding the execution of the Bernstein Trust by Simon Bernstein, as told to me by David Simon, I was appointed as successor trustee of the Bernstein Trust. (*See Ex. 15, and Ex. 16, and Aff. of D. Simon.*)

100. I am willing and competent and have been acting as Trustee of the Bernstein Trust in accordance with the intent of the Grantor, Simon Bernstein and with the authorization and consent of the Consenting Children.

101. Both drafts of the Bernstein Trust at Article Seven have virtually identical provisions regarding the distribution of the Policy Proceeds upon the death of Simon Bernstein. Both drafts of the Bernstein Trust provide as follows: "Upon my death, the Trustee shall divide the property of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These trusts shall be designated respectively by the names of my children." One of the drafts goes on to identify the five children by name. (*See Ex. 15 and Ex. 16 at Article Seven*)

102. Simon Bernstein had five children, and all of them survived him. The five adult children of Simon Bernstein are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein.

103. The Five Children had a total of ten children, and as a result Simon Bernstein had ten grandchildren whose names, year of birth, and parent are as follows:

		<u>D.O.B.</u>	<u>PARENT</u>
i)	Alexandra Bernstein	1988	Ted
ii)	Eric Bernstein	1989	Ted
iii)	Molly Simon	1990	Pam
iv)	Michael Bernstein	1992	Ted
v)	Max Friedstein	1996	Lisa
vi)	Joshua Bernstein	1997	Eliot
vii)	Carly Friedstein	1998	Lisa
viii)	Jacob Bernstein	1999	Eliot
ix)	Julia Iantoni	2001	Jill
x)	Daniel Bernstein	2002	Eliot

104. In the draft of the Bernstein Trust attached hereto as **Ex. 15**, at Article Eight, the Five Children are each identified by name. None of the ten grandchildren's names appear in the document.

105. I have attached a diagram that illustrates Simon Bernstein's intention and plan to ensure that the Policy Proceeds were ultimately for the benefit of the Bernstein Trust. The diagram (**Ex. 17**) illustrates that in **Option A** had the Primary Beneficiary continued to exist at the time of Simon Bernstein's death, then by virtue of the VEBA Beneficiary Designation Simon Bernstein executed which named the Bernstein Trust as beneficiary of the VEBA Trust (**Ex. 4**), the Policy proceeds would have been paid from the Insurer to the VEBA Trust and distributed by the VEBA Trustee to the Bernstein Trust. (*See Ex. 17*)
106. In this case, as explained in ¶71 and ¶72 above, the VEBA ceased to exist in 1998, long before Simon Bernstein passed away. As a result there was no primary beneficiary in existence at the time the Insured's death. At the time of Simon Bernstein's death, the contingent beneficiary of the Policy was the Bernstein Trust. By naming the Bernstein Trust as Contingent Beneficiary, Simon Bernstein ensured that the Policy Proceeds would be paid to the Bernstein Trust whether or not the VEBA continued to exist. (*See Option B on Ex. 17*).
107. In addition to records relating to the Policy at issue, my sister Pamela Simon, located records relating to another life insurance policy issued by Lincoln Benefit Life on the life of Simon Bernstein in 1994 (the "Lincoln Policy"). This Policy was purchased through a life insurance brokerage known as STP Enterprises, Inc. which in the 1990's was co-owned by Simon Bernstein, Pamela Simon and David Simon.
108. This second policy was issued by Lincoln Benefit Life as policy no. U0204204 in June of 1994 with Simon Bernstein as the initial owner and insured (the "Lincoln Policy"). In August of 1995, the ownership of the Lincoln Policy was changed by Simon Bernstein to the Bernstein Trust. The Lincoln Benefit Life policy lapsed several years prior to Simon Bernstein's death. The transfer of ownership form contained the name of the Bernstein Trust and its tax identification number, identified Shirley Bernstein as trustee, and also contains the *witnessed signature* of Simon Bernstein. The Lincoln Policy lapsed in 2006 for non-payment of premium approximately six years prior to my father's passing.
109. The Consenting Children are all in agreement regarding the following facts, and the intent of our father, Simon Bernstein, with regard to the Policy and Policy proceeds:
- a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
 - b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;

- c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
- d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
- e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
- f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
- g) Each of the Consenting Children have signified their consent to a court appointment affirming Ted Bernstein's role as Trustee.
- h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
- i) The beneficiaries of the Bernstein Trust are the five adult children--Ted, Pam, Eliot, Jill and Lisa--to share equally, twenty percent each;
- j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee;
- k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:

"The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995";
- l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:
 - i) First to the payment of attorney Adam M. Simon's fees and costs;
 - ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional

expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares;

- iii) The balance to be split equally among the five adult children of Simon Bernstein;
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received; and
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

110. Plaintiffs, the Bernstein Trust, Ted Bernstein as Trustee and the Consenting Children submit the following evidence of the existence and terms of the trust:

- a) The SS-4 Form containing the name of the Bernstein Trust, the tax identification number of the Bernstein Trust, and the signature of the initial trustee, Shirley Bernstein. (*See Ex. 19*);
- b) The VEBA Beneficiary designation form containing the name of the Bernstein Trust and the signature of the grantor, Simon Bernstein. (*See Ex. 4*);
- c) The Policy beneficiary designation form designating the Bernstein Trust as the contingent beneficiary. (*See Ex. 8*);
- d) A copy of two unexecuted drafts of the Bernstein Trust Agreement (*See Ex. 15 and Ex. 16*).
- e) My Affidavit and the Affidavits of David Simon, and each of the four consenting children.
- f) The Affidavit provided by the Insurer, of Don Sanders, also references Policy records that confirm the designation of the Bernstein Trust as contingent beneficiary of the Policy.

g) The Lincoln Benefit Life change of ownership form for the second policy transferring the ownership of the Lincoln Benefit Life policy from Simon Bernstein to the Bernstein Trust. This form contains the name of the Bernstein Trust, identifies Shirley Bernstein as Trustee, and has a *witnessed signature* of Simon Bernstein. (See Ex. 18).

h) The Equifax investigation report from 1982 which indicates that at the time of issuance the benefits of the insurance policy would be paid to the VEBA, and then as stated in the inspection report, “normally those benefits are paid to family members.” (See Ex. 20).

111. Plaintiffs submit the following evidence of the terms of the Bernstein Trust, including its designated beneficiaries and trustees:

a) The two unexecuted copies (one of which contains contemporaneous handwritten notes) of the Bernstein Trust Agreement;

b) The Lincoln Benefit Life change of ownership form for the second policy transferring the ownership of the Lincoln Benefit Life policy from Simon Bernstein to the Bernstein Trust. This form contains the name of the Bernstein Trust, identifies Shirley Bernstein as Trustee, and has a *witnessed signature* of Simon Bernstein. (See Ex. 18).

c) The SS-4 Form containing the name of the Bernstein Trust, the tax identification number of the Bernstein Trust, and identifying the initial trustee, Shirley Bernstein. (See Ex. 19);

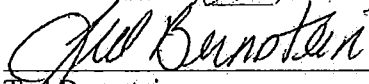
d) Declarations or Affidavits of Ted Bernstein, David Simon, Pam Simon, Jill Iantoni, and Lisa Friedstein.

e) The Equifax investigation report from 1982 which indicates that at the time of issuance the benefits of the insurance policy would be paid to the VEBA, and then as stated in the inspection report of Simon Bernstein, “normally those benefits are paid to family members.” (See Ex. 20).

112. I agree to waive and do not claim any compensation for acting as Trustee of the Bernstein Trust, but I do reserve the right to claim reimbursement for any costs I incur such as legal, or accounting fees in connection with the final distribution.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: February 22th, 2015



Ted Bernstein

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 22nd DAY OF FEBRUARY, 2015.



NOTARY PUBLIC

County of Palm Beach, FL

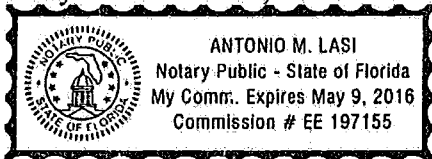


EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted S.)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)

**Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland**

Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

AFFIDAVIT OF DON SANDERS

1. I, Don Sanders, am a resident of the City of Mansfield, County of Tarrant, State of Texas and am over the age of 18. If I were called and sworn as a witness in this matter I could competently and voluntarily testify to the facts set forth in this Affidavit.
2. When I use the term Capitol Bankers, I mean Capitol Bankers Life Insurance Company.
3. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
4. When I use the term "Jackson" I mean Jackson National Life Insurance Company.
5. When I use the term "Insurer", I mean the life insurance company that was the insurer of the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
6. When I use the term "Policy" herein, I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
7. When I use the term "Insured", I mean Simon Bernstein.
8. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.
9. When I use the term "Policy Proceeds", I mean either the amount that was payable by the Insurer under the Policy upon the death of the insured and/or the amount that was actually paid by the Insurer to the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
10. When I use the term "Policy records", I mean the records of the Insurer relating to the Policy as produced by Jackson during the Litigation.
11. When I use the term "Litigation", I mean the above-captioned litigation.
12. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
13. I am currently employed as Assistant Vice-President of Operations for Jackson.
14. I have been employed in Jackson's operations department for the past 11 years, and have been employed in the life insurance industry for approximately 32 years.

15. In my role as Assistant Vice President of Operations with Jackson, I have personal knowledge regarding the policy administration and death claim practices and procedures Jackson utilizes with regard to the Capitol Bankers Life Insurance Policy at issue.
16. I am aware that I am being presented as a witness pursuant to Fed. R. Civ. P. 30(b)(6), on behalf of Jackson in response to a Subpoena for Deposition served upon Jackson by the Plaintiffs in the above-captioned matter.
17. I am aware that pursuant to Rule 30(b)(6) my statements and this Affidavit shall be relied upon as the statements of Jackson, itself.
18. I have had access to counsel for Jackson with regard to my testimony and affidavit prior to having signed this Affidavit.
19. I understand that since Heritage paid the Policy Proceeds to the Registry of the Court, Heritage has been dismissed and is no longer a party to the Litigation.
20. I have no personal or business interest in the outcome of the Litigation including no interest in the determination by the court of the beneficiary(ies) of the Policy Proceeds.
21. No one from Jackson has any interest in the outcome of this Litigation including determination by the court of the beneficiary(ies) of the Policy Proceeds.
22. I have received no compensation from any party to the Litigation in exchange for my testimony.
23. The Policy was issued by Capitol Bankers in 1982.
24. In June 1998, Capitol Bankers was acquired by Swiss Re Life & Health America, Inc.
25. In May of 2000, Capitol Bankers entered into a one hundred percent Coinsurance/Administrative Reinsurance Agreement with Reassure America Life Insurance Company.
26. In May 2000, one hundred percent of stock of the Capitol Bankers was sold to Annuity & Life Reassurance.
27. In December of 2000, Capitol Bankers changed its name to Annuity & Life Reassurance America, Inc.

28. In August 2005, Annuity & Life Reassurance America, Inc. was acquired by Wilton Re Group.
29. In August 2008, Annuity & Life Reassurance America, Inc. changed its name to Heritage Union Life Insurance Company.
30. In 2012, Jackson acquired and merged Reassure America Life Insurance Company into Jackson, and as a result, Jackson became administrator and reinsurer of the Policy.
31. Since at least 2000, Jackson (and/or its predecessor Reassure America Life Insurance Company) has been in possession of the Policy records.
32. I have personal knowledge regarding the record-keeping procedures and practices utilized by Jackson with regard to its administration of the Policy and others like it.
33. I have reviewed and made myself familiar with the Policy records.
34. The Policy records start with bates no. JCK000001 and end at bates no. JCK001275. I have reviewed these bate-stamped records, and can attest that the bate-stamped records are a true, accurate and complete set of the Policy records in Jackson's possession pertaining to the Policy.
35. The Policy records do not contain an original or executed duplicate of the Policy, which was issued in 1982.
36. The Policy records do include a specimen policy form, a copy of the Insured's application, and copies of the schedule pages that were included with the original Policy.
37. Also, the Policy records do not include:
 - (a) an original or copy of the "S.B. Lexington Employee Death Benefit Trust"; or
 - (b) the "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995", or
 - (c) any purported trust named the "Simon Bernstein Trust, N.A."
38. Bates no. JCK001099 to JCK001117 is a Capitol Bankers Life Insurance Company specimen policy form of the Capitol Bankers whole life insurance product referred to as "Current Value Life". This specimen policy is a sample of the policy form issued on the life of Simon Bernstein as Policy No. 1009208 (the "Policy").
39. This specimen policy form contains the same policy language that is contained in Policy No. 1009208. The only pages that are different are pages that relate to the variable policy

specifications that pertain primarily to Simon Bernstein's age, underwriting classification, sum insured and statement of policy costs and benefits.

40. From my review of the records, on the date of issuance the sum insured (or death benefit) of the Policy was \$2 million.
41. The Policy is a whole life, flexible premium, life insurance contract, which is a type of policy that builds cash value as premium payments are made.
42. The Insurer will deduct the monthly cost of insurance charges from any existing cash value in the Policy, but when the cash value is insufficient to cover the cost of insurance, then the Policy will go into a grace period and eventually lapse if no premium payment is made. A brief summary description of these features of the Policy are contained in a letter from the Insurer dated November 9, 2010, to the Owner. (Bates No. JCK000131).
43. If premium payments are not made according to schedule, or Policy loans are taken against the cash value, this reduces the cash value which negatively impacts the Policy's performance and eventually results in a reduction in the Policy proceeds.
44. The Policy records indicate that premiums were not made according to schedule, and Policy loans occurred with regard to the Policy such that at the time of the Insured's death, the net death benefit payable by the Insurer was \$1,689,070.00 (the "Policy Proceeds").
45. Bate stamp no. JCK001252-JCK001258 is a financial history report that is titled "Financial Activity from Issue."
46. On page JCK001258, the financial history report indicates that the amount of the Policy Proceeds at the time of the Insured's death was \$1,689,070.00.
47. I have reviewed the receipt from the Registry of the Court for the Northern District of Illinois (the "Registry"), and according to the receipt the Policy Proceeds, a total of \$1,703,567.09, was deposited by the Insurer to the Registry on June 26, 2013. This deposit represented the Policy Proceeds of \$1,689,070.00, less a deduction for a policy loan, plus interest paid from the date of Simon Bernstein's death until the date of deposit with the Registry. (Bates No. BT000106)
48. Part I of the Policy application is contained in the Policy records as Bates No. JCK000419. The owner and beneficiary sections of Part I set forth the initial policy owner and beneficiary(ies) of the Policy.

49. According to Part I of the application, the Policy Owner at issuance was "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust".
50. Also according to Part I of the application, the beneficiary was designated as follows: "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust".
51. According to Part I of the application, Simon Bernstein's employer at the time of issuance was S.B. Lexington, Inc. and his title was listed as Chairman of the Board. (JCK000419).
52. Bates no. JCK001021 is a copy of the Schedule Page that was included with the Policy. The Schedule Page indicates the Policy No. 1009208 was a "Current Value Life" plan issued on December 27, 1982, insuring the life of Simon Bernstein with a "sum insured" of \$2 million.
53. Bates no. JCK001023 through JCK001024 is a copy of a Current Value Life, Statement of Policy Cost and Benefit Information which is an illustration of projected values and benefits of the Policy. This Statement of Policy Cost and Benefit Information indicates on its face that it was produced on the issue date of the Policy, December 27, 1982.
54. On or about November 7, 1989 the Insurer acknowledged a change of ownership designating United Bank of Illinois as trustee. (JCK000811). This first change of trustee likely occurred as early as July 6, 1983, because the Insurer received and recorded a Request Letter making this same change in trustee. (JCK000935)
55. On or about June 5, 1992, a letter submitted on behalf of the Policy Owner informing the Insurer that LaSalle National Trust was being appointed as successor trustee. On June 17, 1992, the Insurer acknowledged the change of ownership and designated the Policy Owner on its records as LaSalle National Trust, N.A., as Successor Trustee. (Bates No. JCK000365).
56. On or about November 27, 1995, Capitol Bankers received a "Request Letter" signed by LaSalle National Trust, N.A. in their capacity as Trustee, as Policy Owner, and the Request Letter contained the following requested changes to the Policy:
 - (a) LaSalle National Trust, N.A. as Trustee was designated as the primary beneficiary of the Policy; and
 - (b) The Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995 was designated as the contingent beneficiary.

57. Though the name of the Trust on the Request Letter was set forth as stated in Par. 30(b) above, it was apparently abbreviated upon input into the Insurer's systems as Simon Bernstein Ins. Trust Dated 6/21/95. (Bates No. JCK000370, JCK000372, JCK000514, JCK000554, 599, 601).
58. As a matter of standard policy and procedures at Jackson and as set forth in the Policy itself, the designation of the Owner and Beneficiary is governed by the Request Letter or Direction of the Owner and not by how the name of the owner or beneficiary is input by employees into the Insurer's systems as part of policy administration.
59. In my experience in operations, Insurers' systems require employees to abbreviate names of owners and/or beneficiaries at times when the names contain too many characters for the Insurer's systems capabilities.
60. On November 27, 1995 Capitol Bankers sent correspondence to LaSalle National Trust N.A., as Successor Trustee acknowledging the changes in beneficiaries as referenced in Par. 56 above.
61. In April of 1998, LaSalle National Trust, as successor Trustee submitted a change of owner which designated Simon Bernstein as the Owner of the Policy. (Bates No. JCK000560).
62. After reviewing Jackson's records on the Policy, I can confirm on behalf of Jackson that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (Bates No. JCK000370).
63. Capitol Bankers Life Insurance Company acknowledged receipt of the "executed beneficiary change" in its correspondence to the Owner of the Policy dated November 27, 1995. (JCK000372).
64. According to Jackson's records, following the death of Simon Bernstein, Heritage or Jackson received competing claims to the death benefit proceeds. Jackson or Heritage received claims on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 and a competing claim in the form of a letter from Eliot Bernstein either on his own behalf or on behalf of his children.

65. According to Jackson's records on the Policy, no one named Eliot Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
66. According to Jackson's records on the Policy, no one named Joshua Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
67. According to Jackson's records on the Policy, no one named Jacob Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
68. According to Jackson's records on the Policy, no one named Daniel Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
69. According to Jackson's records on the Policy, no Owner of the Policy ever submitted a beneficiary designation which designated Simon Bernstein Trust, N.A. as a beneficiary of the Policy.
70. According to Jackson's records, no Owner of the Policy ever submitted a beneficiary designation which designated "Simon Bernstein's estate" or "the Estate" as beneficiary.
71. From my review of the records, and my experience in the industry and with Insurer database systems, it is evident that the name Simon Bernstein Trust, N.A. was either entered by an employee of the Insurer either as an abbreviation for the actual contingent beneficiary or in error. In any case, the document that contains the Owner's actual last beneficiary designation prior to the death of the insured is Bates No. JCK000601. In this document, the Owner designates Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 as the contingent (or successor) beneficiary.
72. The last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured is Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995". (See Bates No. JCK000370 and JCK000372).
73. According to Jackson's records, the last change of Owner submitted on the Policy prior to the death of the insured was on or about April 3, 1998. (JCK000563 and 566).
74. According to Jackson's records, a company named Equifax conducted an interview in connection with the application and underwriting for the Policy. The Equifax report indicates that Simon Bernstein was interviewed on March 25, 1982. The report says on

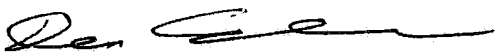
its face that it was prepared for Life Insurance Underwriting purposes only.
(JCK001074).

75. Contained in the Equifax Report from Simon Bernstein's interview is the following description of the intended purpose of the insurance:
"BENEFICIARY-PURPOSE OF INSURANCE: The beneficiary of this policy is First Arlington National Bank, S.B. Lexington, Inc. employee death benefit trust. The insurance will be paid to the trust, and the trust will determine the manner in which the benefits are to be paid and to whom it will be paid. Normally, benefits are paid to family members." (JCK001084).
76. Since the death of Simon Bernstein, Jackson (and "Heritage") has received notices of potential claims from the Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95, and from Eliot Bernstein, purportedly on his own behalf and on behalf of his children. I am aware that a person named William Stansbury filed a petition to intervene in the above-captioned litigation but that his petition to intervene was denied by the court. I am aware that in Plaintiff's First Amended Complaint, that Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein have filed claims seeking imposition of a Resulting Trust and as such First Amended Complaint does represent additional potential claims to the Policy Proceeds.
77. The Policy records do not include any notices of claims from any of the following individuals or entities:
- a) The VEBA;
 - b) Any Bank Trustee of the VEBA;
 - c) Adam Simon;
 - d) David Simon;
 - e) The Simon Law Firm ; or
 - f) STP Enterprises, Inc.

78. I am unaware of any claims having been received by Jackson or Heritage as to the Policy proceeds from any persons or entities, other than those described in Par. 76 above.

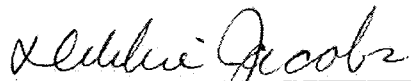
FURTHER AFFIANT SAYETH NAUGHT.

Dated: April 8, 2014



Don Sanders, Assistant Vice-President
Jackson National Life Insurance Company

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 8th DAY OF APRIL, 2014.



NOTARY PUBLIC
County of Dallas, TX

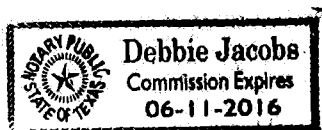


EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted S.)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)

Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland

Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

AFFIDAVIT OF LISA FRIEDSTEIN

I, Lisa Friedstein, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Highland Park, County of Lake, State of Illinois and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My maiden name is Lisa Bernstein. My married name is Lisa Friedstein.
3. I am one of five adult children of Simon Bernstein.
4. When I use the term "Affidavit of Don Sanders" I mean a certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.

13. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.
14. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
15. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term "Litigation", I mean the above-captioned litigation.
17. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I have had an opportunity to consult with my attorney, and review the documents produced by all parties in the above-referenced litigation.
19. I have also reviewed the Affidavit of Don Sanders.
20. I have reviewed the Insurer's records regarding the amount of the death benefit, and have reviewed the receipt for the deposit of the Policy Proceeds with the Registry of the Court in the amount of \$1,703,567.09. I have no dispute or objection to the amount deposited as the Policy Proceeds.
21. I concur with the statements of Don Sanders in his Affidavit that the last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured marked as Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995".
22. I concur with Ted Bernstein and the documentation submitted by Plaintiffs in support of our motion for summary judgment with regard to the existence and terms of the Bernstein Trust, and Ted Bernstein's role as trustee.

23. Based on the foregoing, I am in agreement regarding the following facts, and the intent of our father, Simon Bernstein, with regard to the Policy proceeds:
- a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
 - b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;
 - c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
 - d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
 - e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
 - f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
 - g) Each of the Consenting Children have signified their consent to a court appointment of Ted Bernstein as Trustee.
 - h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
 - i) The beneficiaries of the Bernstein Trust are the five adult children (including Eliot, the non-consenting child) to share equally, twenty percent each;
 - j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee.
 - k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:

"The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995".

l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:

- i) First to the payment of attorney Adam M. Simon's fees and costs;
- ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares.
- iii) The balance to be split equally among the five adult children of Simon Bernstein.
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received.
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: FEBRUARY 5, 2015


LISA FRIEDSTEIN

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 5 DAY OF FEBRUARY, 2015.


NOTARY PUBLIC
County of Lake, IL



EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted S.)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)

Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland

Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

AFFIDAVIT OF JILL IANTONI

I, Jill Iantoni, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Highland Park, County of Lake, State of Illinois and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My maiden name is Jill Bernstein. My married name is Jill Iantoni.
3. I am one of five adult children of Simon Bernstein.
4. When I use the term "Affidavit of Don Sanders" I mean a certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.

13. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.
14. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
15. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term "Litigation", I mean the above-captioned litigation.
17. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I have had an opportunity to consult with my attorney, and review the documents produced by all parties in the above-referenced litigation.
19. I have also reviewed the Affidavit of Don Sanders.
20. I have reviewed the Insurer's records regarding the amount of the death benefit, and have reviewed the receipt for the deposit of the Policy Proceeds with the Registry of the Court in the amount of \$1,703,567.09. I have no dispute or objection to the amount deposited as the Policy Proceeds.
21. I concur with the statements of Don Sanders in his Affidavit that the last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured marked as Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995".
22. I concur with Ted Bernstein and the documentation submitted by Plaintiffs in support of our motion for summary judgment with regard to the existence and terms of the Bernstein Trust, and Ted Bernstein's role as trustee.

23. Based on the foregoing, I am in agreement regarding the following facts, and the intent of our father, Simon Bernstein, with regard to the Policy proceeds:

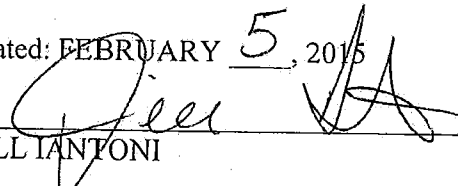
- a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
- b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;
- c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
- d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
- e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
- f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
- g) Each of the Consenting Children have signified their consent to a court appointment of Ted Bernstein as Trustee.
- h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
- i) The beneficiaries of the Bernstein Trust are the five adult children (including Eliot, the non-consenting child) to share equally, twenty percent each;
- j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee.
- k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:

“The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995”.

l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:

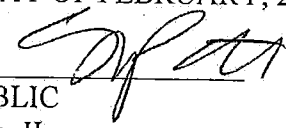
- i) First to the payment of attorney Adam M. Simon’s fees and costs;
- ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares.
- iii) The balance to be split equally among the five adult children of Simon Bernstein.
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received.
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: FEBRUARY 5, 2015


JILL IANTONI

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 5 DAY OF FEBRUARY, 2015.



NOTARY PUBLIC
County of Lake, IL



EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted S.)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)

**Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)
_____)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)

ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)

TESCHER & SPALLINA, P.A.,)

DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)

both Professionally and Personally,)

LISA FRIEDSTEIN, JILL IANTONI)

S.B. LEXINGTON, INC. EMPLOYEE)

DEATH BENEFIT TRUST, S.T.P.)

ENTERPRISES, INC. S.B. LEXINGTON,)

INC., NATIONAL SERVICE)

ASSOCIATION (OF FLORIDA),)

NATIONAL SERVICE ASSOCIATION)

(OF ILLINOIS) AND JOHN AND JANE)

DOES)

Third-Party Defendants.)
_____)

AFFIDAVIT OF PAM SIMON

I, Pam Simon, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Chicago, County of Cook, State of Illinois and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My maiden name is Pamela Beth Bernstein. My married name is Pamela Beth Simon or Pam Simon.
3. I am one of five adult children of Simon Bernstein.
4. When I use the term "Affidavit of Don Sanders" I mean a certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.
13. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.

14. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
15. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term "Litigation", I mean the above-captioned litigation.
17. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I have had an opportunity to consult with my attorney, and review the documents produced by all parties in the above-referenced litigation.
19. I have reviewed the Affidavit of Don Sanders.
20. I have been a licensed insurance agent in the State of Illinois for at least 35 years. In the 1980's and early 1990's, I was located in the same business office as my father, Simon Bernstein.
21. In the early 1980's, I along with my father, Simon Bernstein and brother, Ted Bernstein, marketed and sold VEBA Death Benefit Plans wherein corporate benefit plans would purchase life insurance on employees, and the employees would name the ultimate beneficiary of their death benefit by completing a Plan and Trust Beneficiary Designation Form.
22. In my experience as an insurance agent, and more specifically in my experience with the sales of life insurance policies issued through a Voluntary Employee Benefit Association, the original of the life insurance policy would be delivered by the insurer of the policy to the owner of the policy as listed on the application. On the application, the initial owner was listed as First Arlington National Bank as Trustee for the S.B. Lexington Employee Death Benefit Trust.
23. In late 1982, First Arlington National Bank was located in Arlington Heights, Illinois. First Arlington National Bank was the Trustee of the VEBA and was thus acting on behalf of the VEBA as Owner of the Policy. In my experience the insurer would have delivered the original Policy to the agent whom would then deliver the Policy to the original Owner. The agent whom signed the application for the Policy was my father Simon Bernstein whose offices were located in Chicago, Illinois. The delivery of the Policy to the Owner would have occurred in Arlington Heights, Illinois.
24. In late December of 1982 at the time of Policy issuance and delivery, Simon Bernstein, the insured, resided and was domiciled in Glencoe, Illinois.

25. In the late 1980's my father, Simon Bernstein, my husband, David Simon and myself, co-owned a life insurance brokerage named STP Enterprises, Inc. ("STP") that was located in offices in Chicago, Illinois. I am currently the president of STP. STP was named a third-party defendant to Eliot's claims. STP is represented by counsel, Adam M. Simon.
26. One of the life insurance companies, STP represented was Lincoln Benefit Life Insurance Company. In the 1990's my father, Simon Bernstein applied for and purchased a life insurance policy issued by Lincoln Benefit Life. During a search of records located at our Chicago offices following the death of my father, Simon Bernstein, we located a file containing documents relating to the Lincoln Benefit Life Policy and Plaintiff has produced those documents in this litigation. (See Ex. 18).
27. Ex. 18 is Lincoln Benefit Life Request for Service form for Lincoln Policy #U0204204 (the "Lincoln Policy"). This form indicates that the insured and owner was Simon Bernstein and that ownership of the Lincoln Policy was being transferred to the "Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95", and includes the Tax ID for the trust, and the name of Shirley Bernstein as trustee. The document also contains the signature of my father, Simon Bernstein. I recognize my father's signature and have seen it on many occasions. Also, his signature was witnessed by former STP employee, Debbie Marsh, whose signature I also recognize. The document indicates it was received at Lincoln's Home Office and recorded on August 8, 1995. The Lincoln Policy lapsed for non-payment of premium in 2006, six years prior to Simon Bernstein's passing.
28. According to the Policy Records, the Policy was issued by Capitol Bankers in 1982. I have reviewed and made myself familiar with the Policy Records which start with bates no. JCK000001 and end at bates no. JCK001324.
29. I have also reviewed and made myself familiar with Plaintiff's document production made pursuant to Fed. R. Civ. P. 26. A true, accurate and complete set of copies of those documents were served upon the other parties to this Litigation and were stamped with bates no. BT000001-BT000112.
30. I have reviewed the Insurer's records regarding the amount of the death benefit, and have reviewed the receipt for the deposit of the Policy Proceeds with the Registry of the Court in the amount of \$1,703,567.09. I have no dispute or objection to the amount deposited as the Policy Proceeds.

31. On June 5, 1992, Sandy Kapsa (an employee of S.B. Lexington and an affiliated company, National Service Association, Inc.) submitted a letter to Capitol Bankers Life Insurance Company informing them that LaSalle National Trust was being appointed successor trustee of the VEBA. On June 17, 1992, the Insurer acknowledged the change of ownership listing the owner as LaSalle National Trust, N.A., as Successor Trustee. (*See Ex. 7*)
32. I concur with the statement of Don Sanders in his Affidavit that the last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured marked as Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995".
33. In 1995, David B. Simon, Ted S. Bernstein, Pam Simon, and Simon L. Bernstein all shared common office space at 600 West Jackson Blvd., Ste. 800, Chicago, IL 60606.
34. In 1995, my husband, David Simon and I created irrevocable insurance trusts with the assistance of attorneys from the firm of Hopkins and Sutter.
35. On August 26, 1995, Simon L. Bernstein, as a Member of the VEBA, named the Bernstein Trust as the "person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and Adoption Form adopted by my Employer." I recognize the signature on the VEBA Beneficiary Designation form as that of my father, Simon Bernstein. (*See Ex. 4*).
36. On April 3, 1998, S.B. Lexington, Inc. was voluntarily dissolved by its shareholder(s), and the VEBA was likewise terminated at this time. As a part of the dissolution, ownership of the Policy was changed from the VEBA to Simon Bernstein, Individually (*See Ex. 9*).
37. After the death of Simon Bernstein, David Simon and I, with the assistance of our employees, conducted a search of my offices and business records in Chicago, Illinois. We located two unexecuted drafts of the Bernstein Trust were located. We were unable to locate an executed original or copy of the Bernstein Trust. (*See Ex. 15 and Ex. 16*).
38. Based on the foregoing, I am in agreement regarding the following facts, and the intent of my father, Simon Bernstein, with regard to the Policy proceeds:
 - a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
 - b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;

- c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
- d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
- e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
- f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
- g) Each of the Consenting Children have signified their consent to a court appointment of Ted Bernstein as Trustee.
- h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
- i) The beneficiaries of the Bernstein Trust are the five adult children (including Eliot, the non-consenting child) to share equally, twenty percent each;
- j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee;
- k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:

“The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995”.

l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:

- i) First to the payment of attorney Adam M. Simon's fees and costs;
- ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares.
- iii) The balance to be split equally among the five adult children of Simon Bernstein.
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received.
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: FEBRUARY 24TH, 2015



PAMELA SIMON

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 24th DAY OF FEBRUARY, 2015.


NOTARY PUBLIC
County of Lake, IL



EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted S.)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)

Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland

Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

AFFIDAVIT OF DAVID SIMON

I, David Simon, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Chicago, County of Cook, State of Illinois and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My name is David B. Simon. I am also known by the nickname "Scooter". I am married to Pamela Simon and am the brother of Adam Simon. I am also the owner of The Simon Law Firm and a Co-Owner of STP Enterprises, Inc. I am represented by Adam Simon as is my wife, Pam Simon, The Simon Law Firm and STP Enterprises, Inc.
3. When I use the term "Affidavit of Don Sanders" I mean a certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
4. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
5. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
6. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
7. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
8. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
9. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
10. When I use the term "Insured", I mean Simon Bernstein.
11. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.
12. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.


13. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
14. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
15. When I use the term "Litigation", I mean the above-captioned litigation.
16. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
17. I have had an opportunity to consult with my attorney, and review the documents produced by all parties in the above-referenced litigation.
18. I have also reviewed the Affidavit of Don Sanders.
19. I am an attorney licensed to practice in the States of California and Illinois. I have been a licensed insurance agent in the State of Illinois for over 25 years. In the late 1980's and early 1990's, I was located in the same business office as my father-in-law, Simon Bernstein.
20. In the late 1980's my father-in-law, Simon Bernstein, my wife, Pam Simon and myself, co-owned a life insurance brokerage named STP Enterprises, Inc. ("STP") that was located in offices in Chicago, Illinois.
21. One of the life insurance companies, STP represented was Lincoln Benefit Life Insurance Company. In the 1990's my father-in-law, Simon Bernstein applied for and purchased a life insurance policy issued by Lincoln Benefit Life. During a search of records located at our Chicago offices following the death of my father-in-law, Simon Bernstein, we located a file containing documents relating to the Lincoln Benefit Life Policy and Plaintiff has produced those documents in this litigation. (See Ex. 18).
22. Ex. 18 is a Lincoln Benefit Life Request for Service form for Lincoln Policy #U0204204 (the "Lincoln Policy"). This form indicates that the insured and owner was Simon Bernstein and that ownership of the Policy was being transferred to the "Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95", and includes the Tax ID for the trust, and the name of Shirley Bernstein as trustee. The document also contains the signature of my father-in-law, Simon Bernstein. I recognize my father in-law's signature and have seen it on many occasions. Also, his signature was witnessed by former STP employee, Debbie Marsh, whose signature I also recognize. The document indicates it was received at Lincoln's Home Office and recorded on August 8, 1995. (See Ex. 18)

23. In 1994, my wife and I retained an attorney at the law firm of Hopkins and Sutter in Chicago to help us prepare and execute an irrevocable insurance trust for our own estate planning purposes.
24. In 1995, Simon Bernstein came to me and expressed an interest in creating a life insurance trust for himself.
25. I created a sample insurance trust for Simon Bernstein and reviewed it with him. We agreed that Simon Bernstein should also use Hopkins and Sutter to finalize and execute his insurance trust. We also discussed that the insurance trust was for the benefit of his wife, and then his five children, and that he wanted to name his wife, Shirley as Trustee, and then either me, Ted or Pam as Successor Trustee. I suggested that he appoint Ted as the next trustee.
26. Simon Bernstein took a copy of the draft of the trust I provided and went to Hopkins and Sutter to execute his insurance trust.
27. I met again with Simon Bernstein after he had signed the trust, and I reviewed the executed Bernstein Trust Agreement and saw that he had removed me as a Successor Trustee. I also assisted Simon Bernstein with preparing forms for Lincoln Benefit Life to put ownership of the Lincoln Policy in the name of the Bernstein Trust.
28. After the death of Simon Bernstein, I conducted a search of my offices and records in Chicago, Illinois. I was able to locate a hard copy draft of the Simon Bernstein Irrevocable Insurance Trust in one folder, and this document contains some of my handwritten notes from one of my conversations with Simon Bernstein referenced above. (See Ex. 16).
29. With the help of my brother, Adam Simon, we also located a file on our computer database entitled "SITRUST". We were able to print this draft and the metadata of the file. The metadata indicated was last modified on June 21, 1995. The metadata also includes a "date created" date of September of 2004, but I know that the September of 2004 date relates to the creation of our new database when my offices updated our database servers. The SITRUST file was a pre-2004 file that was uploaded to our new database servers when we purchased and installed them in September of 2004. (See Ex. 15).
30. Once Simon Bernstein formed and executed the Simon Bernstein Insurance Trust Agreement, I assisted him and his wife, Shirley with obtaining a tax identification number for the Bernstein Trust. During the process of obtaining the tax identification number I prepared an IRS SS-4 form, which contains the name of the trust, the name of the trustee, the tax identification number, and the signature of Shirley Bernstein. (See Ex. 19).

31. To the best of my knowledge and belief, Simon Bernstein took the original Bernstein Trust Agreement with him at the time he moved his offices from Chicago to Florida.

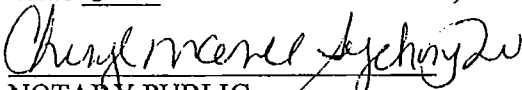
FURTHER AFFIANT SAYETH NAUGHT.

Dated: FEBRUARY 25, 2015



DAVID SIMON

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 25th DAY OF FEBRUARY, 2015.



NOTARY PUBLIC
County of Cook, State of Illinois



EXHIBIT 7

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN)
IRREVOCABLE INSURANCE)
TRUST DTD 6/21/95, by)
Ted S. Bernstein, its)
Trustee, Ted S.)
Bernstein, an)
individual, Pamela B.)
Simon, an individual,)
Jill Iantoni, an)
individual, and Lisa S.)
Friedstein, an)
individual,)

)
Plaintiff,)

)
vs.) No. 13 CV 3643

)
HERITAGE UNION LIFE)
INSURANCE COMPANY,)
)
Defendant.)

The deposition of DAVID SIMON, called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Vicki L. D'Antonio, a certified shorthand reporter of the State of Illinois, at One East Wacker Drive, Chicago, Illinois, on the 5th day of January, 2015, at the hour of 2:18 p.m.

Reported by: Vicki L. D'Antonio, CSR, RPR
License No. 084-004344

1 APPEARANCES:

2

STAMOS & TRUCCO, LLP, by

3

MR. JAMES J. STAMOS

MR. KEVIN P. HORAN

4

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(312) 630-7979

6

jstamos@stamostrucco.com

khoran@stamostrucco.com

7

Representing the Plaintiff;

8

9

THE SIMON LAW FIRM, by

MR. ADAM M. SIMON

10

203 East Wacker Drive

Suite 2725

11

Chicago, Illinois 60601

(312) 819-0730

12

asimon21@att.net

13

Representing the Defendant.

14

15

ALSO PRESENT VIA TELEPHONE:

16

Ms. Joielle Foglietta

Mr. Bill Stansbury

17

Mr. Eliot Bernstein

Honorable Amy J. St. Eve

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NOTE: Exhibits retained by Mr. Adam Simon.

1 (Whereupon, the witness was duly
2 sworn.)

3 DAVID SIMON,
4 having been first duly sworn, was examined and
5 testified as follows:

6 EXAMINATION

7 BY MR. STAMOS:

8 Q. Will you state your name, please.

9 A. David Bruce Simon.

10 Q. Have you been deposed before?

11 A. I have.

12 Q. And how many times?

13 A. I believe one or two.

14 Q. The first one that comes to mind -- the
15 first one that -- bringing to mind the first
16 deposition you can remember, what was it -- what
17 did it involve?

18 A. I think I was deposed in a case
19 revolving around a suit for disparagement in
20 Kentucky.

21 Q. What was the name of the case?

22 A. Ernie -- David Simon and S.T.P.
23 Enterprises versus Ernie Sampson and Kentucky
24 Financial, I think, is the -- something like

1 that.

2 Q. What year was that?

3 A. I want to say the late '80s, early

4 '90s.

5 Q. Someone had said something unpleasant

6 about you and you sued them?

7 A. Not about me, no.

8 Q. About the company?

9 A. About the program.

10 Q. Was that litigation resolved?

11 A. It was.

12 Q. And how was it resolved?

13 A. Well, we lost at summary judgment, we

14 appealed, we lost, and then we entered into an

15 agreement with the individual to correct his

16 misassumptions about the program.

17 Q. Okay. When you said the program, what

18 are you referring to?

19 A. The Arbitrage Life Payment System.

20 Q. Is that something that still continues?

21 A. It does.

22 Q. And how -- who is it administered or

23 offered by?

24 A. S.T.P. Enterprises, Inc.

1 Q. There was a second deposition, was
2 there?

3 A. ING -- Security Life of Denver.

4 Q. There was a lawsuit involving Security
5 Life of Denver?

6 A. Correct.

7 Q. Who was the plaintiff and who was the
8 defendant?

9 A. Life Plans, Inc. is the plaintiff.
10 Security Life of Denver is the defendant.

11 Q. Is it a pending litigation?

12 A. It is.

13 Q. Where is it pending?

14 A. Northern District of Illinois.

15 Q. What is the nature of that case?

16 A. Breach of contract and tortious
17 interference.

18 Q. Who is the plaintiff?

19 A. Life Plans.

20 Q. How are you related to Life Plans?

21 A. I'm on their board.

22 Q. And you're a party or you're just a
23 member -- as a person with knowledge, you were
24 deposed?

1 A. I'm also the general counsel. I don't
2 own any of the company, though.

3 Q. Where are you currently employed?

4 A. S.T.P. Enterprises, Inc.

5 Q. Who owns that?

6 A. Fifty percent of it is owned by a trust
7 that I control. Fifty percent of it is owned by
8 a trust that Pam Simon controls.

9 Q. Pam Simon is who?

10 A. My wife.

11 Q. How long have you had that interest,
12 the 50 percent interest that you control in
13 S.T.P.?

14 A. I believe 2000.

15 Q. All right. And how did you come to
16 possess that interest?

17 A. Bought it.

18 Q. From whom?

19 A. Which part?

20 Q. You tell me.

21 A. The first part was bought in from Dov
22 Kahana, and the second part was bought from
23 Simon Bernstein.

24 Q. 25 percent each part? I want to

1 know -- I'll back up.

2 The 50 percent that you control, was
3 that -- was that obtained at the same time that
4 Pam control -- obtained her 50 percent?

5 A. Yes.

6 Q. And each of you obtained what portion
7 of your 50 percent from which of those people?

8 A. Half of it from Dov Kahana, half of it
9 from Simon Bernstein.

10 Q. And what was the compensation paid for
11 it?

12 A. For Dov Kahana?

13 Q. Okay.

14 MR. SIMON: I'm going to object as relevance.

15 THE WITNESS: I don't know the exact numbers,
16 but it was six figures and release from any
17 debts and obligations.

18 BY MR. STAMOS:

19 Q. How about to Mr. Bernstein?

20 MR. SIMON: Same objection.

21 THE WITNESS: Several million dollars.

22 BY MR. STAMOS:

23 Q. All right. When did you first start
24 working with Mr. Bernstein?

1 A. In what capacity? Do you mean with --

2 Q. Any. Any capacity.

3 Okay. So did you -- at one point, were
4 you in business with Simon Bernstein in any
5 capacity?

6 A. Yes.

7 Q. When was the first time you were in any
8 way associated with him?

9 A. Well, associated with him the first
10 time was -- I don't know what you mean by
11 associated, but the first time I was associated
12 with him was that his daughter sold my father
13 life insurance in, I believe, 1978. I was --

14 Q. His daughter Pam?

15 A. Yes.

16 Q. Okay.

17 A. When she updated the life insurance
18 plan, that's the first time I met Simon
19 Bernstein.

20 Q. Were you employed elsewhere at that
21 time?

22 A. I was.

23 Q. Where were you employed?

24 A. I was employed at that -- I was

1 self-employed.

2 Q. Doing what?

3 A. Law.

4 Q. When did you graduate law school?

5 A. 1984.

6 Q. And what did you do following

7 graduation from law school?

8 A. Law.

9 Q. Where did you law [sic]?

10 A. First in California, and then within

11 about six months, Illinois.

12 Q. All right. When you came to work as a

13 lawyer in Illinois, where did you work?

14 A. For myself.

15 Q. What kind of law did you practice?

16 A. General corporate, mostly litigation.

17 Q. And have you ever been associated as a

18 lawyer with other lawyers?

19 A. When I first started in California,

20 yes.

21 Q. Other than that, have you always been

22 on your own?

23 A. I've had other lawyers work with me and

24 for me, but yes.

1 Q. Do you continue to practice law today?

2 A. I do.

3 Q. What kind of law do you practice?

4 A. Mostly, I would say I -- my practice is
5 structured finance. However, I also service a
6 handful of clients in whatever their needs are.
7 I will maybe find another attorney to partner
8 with if their expertise is needed or will handle
9 it in-house.

10 Q. Are you on any boards of directors?

11 A. Yes.

12 Q. What boards of directors are you on?

13 A. For-profit companies?

14 Q. Any boards.

15 A. S.T.P. Enterprises, Life Plans, Inc.,
16 Intervivos Foundation, Institutional Longevity
17 Assets.

18 Q. What's that?

19 A. It's a limited liability company.
20 And Institutional Pooled Benefits.

21 Q. The last one, what does that company
22 do?

23 A. That owns a patent that pools death
24 benefit.

1 Q. The entity you named before, that --
2 the LLC, what does that company do?

3 A. That's the asset that promotes that
4 pooling.

5 Q. And the company that was in litigation
6 that you were on the board of, which one was it?

7 A. Life Plans?

8 Q. That's the last one you mentioned? Had
9 you mentioned that in the list of boards? I
10 didn't -- I didn't catch it. Okay.

11 A. Yes.

12 Q. What is its business, Life Plans?

13 A. Insurance agency.

14 Q. How much of your time do you currently
15 spend practicing law as opposed to the other
16 ventures in which you're involved?

17 A. The Simon Law Firm, I probably spend
18 now probably 25 percent of my time.

19 Q. Did there come a time when you became
20 professionally associated with Simon Bernstein?

21 A. As his attorney? Yes.

22 Q. I don't -- I don't -- I'm not sure what
23 you're intending to leave out, but in any
24 capacity, when is the first time you became

1 associated professionally with Simon Bernstein
2 in any way?

3 A. 1986.

4 Q. And what was -- in what capacity was
5 that?

6 A. Attorney.

7 Q. And how long did you serve as his
8 attorney?

9 A. About ten years.

10 Q. So that would be about to '96?

11 A. Yes.

12 Q. At some point, did you become involved
13 with him in the insurance business?

14 A. Yes.

15 Q. When was that?

16 A. 1987.

17 Q. In what capacity did you become
18 involved with him in the insurance business in
19 1987?

20 A. I wrote a documentation for a life
21 insurance sales concept that had been originated
22 by his brother.

23 Q. Who was his brother?

24 A. Norman Bernstein.

1 Q. Were they in business together at the
2 time?

3 A. I believe they did share one common
4 business.

5 Q. At some point, I take it you married
6 his daughter?

7 A. I did.

8 Q. When was that?

9 A. July 3, 1988.

10 MR. STAMOS: Let's go off the record for a
11 second.

12 (Whereupon, a discussion was had
13 off the record.)

14 BY MR. STAMOS:

15 Q. All right. We were talking about his
16 brother Norman, I guess, when he was -- you --
17 you assisted him in preparing a document that
18 defined a product he was going to offer? Is
19 that what that was?

20 A. I prepared some transactional documents
21 for a unique program to sell life insurance and
22 a manner to pay for it.

23 Q. And did there come a time when you
24 became involved in the actual life insurance or

1 insurance business as opposed to simply serving
2 as a lawyer for his business?

3 A. Yes.

4 Q. When was that?

5 A. 1988.

6 Q. In what -- in what capacity did you --
7 did you participate?

8 A. Owner of S.T.P. Enterprises.

9 Q. Right. What does that do? What do you
10 do as the owner of S.T.P.?

11 A. Promote the Arbitrage Life Payment
12 System as well as general life insurance
13 brokerage.

14 Q. Can you describe for me this Arbitrage
15 program you're talking about?

16 MR. SIMON: Object, relevance and --

17 BY MR. STAMOS:

18 Q. I don't need a long explanation. I
19 just want to -- when you say it, I want to know
20 what you're talking about.

21 A. It's a way to pay for life insurance
22 using leverage.

23 Q. Okay. For example?

24 A. Borrow from a bank to pay the premiums.

1 Q. I see.

2 A. Although the individual doesn't borrow
3 and there's some nuances to the program that are
4 unique compared to standard premium finance.

5 Q. Now, in the course of your association
6 with Mr. Bernstein, I know we're here talking
7 about this life insurance policy. I want to
8 designate it correctly so we don't get ourselves
9 confused.

10 The Capitol -- was originally the
11 Capitol Bankers Life policy, you know what
12 I'm -- you know what policy I'm talking about,
13 correct?

14 A. I do.

15 Q. Are you aware of any other insurance
16 policies that ever existed that insured the life
17 of Simon Bernstein or his wife?

18 A. I am.

19 Q. Okay. Tell me what other policies
20 you're aware of.

21 A. Lincoln Benefit Life, Inter-Ocean Life.

22 Q. And were benefits paid on those two
23 policies after his death?

24 A. Not to my knowledge.

1 Q. Were they in force at the time of his
2 death?

3 A. Not to my knowledge.

4 Q. And how are you aware that they
5 existed?

6 A. The Lincoln Benefit Life was paid for
7 through the Arbitrage Life Payment System, so I
8 participated in the closing of that policy.

9 Q. What was the benefit on that?

10 A. I believe \$200,000.

11 Q. And the Ocean, Inter-Ocean Life policy,
12 how were you aware of its existence?

13 A. From Simon.

14 Q. He told you it existed?

15 A. Yes.

16 Q. What was the -- what was the benefit on
17 that policy?

18 A. I'm not a hundred percent sure, but it
19 is my belief that it was a million dollars.

20 Q. And what years -- what year was it
21 initiated?

22 A. I don't know. Sometime in the '70s or
23 early '80s, I believe.

24 Q. Was it a term policy?

1 A. I don't know.

2 Q. How did you come to learn about it?

3 A. Discussing with him his life insurance.

4 Q. When did you first become aware of the
5 Capitol life policy?

6 MR. SIMON: Objection just to form. I think
7 we need to --

8 BY MR. STAMOS:

9 Q. Capitol Bankers Life policy. I'm
10 sorry.

11 I'll restate the question.

12 When did you first become aware of the
13 Capitol Bankers Life policy?

14 A. I believe sometime in the mid '80s.

15 Q. Do you know what year it was initiated?

16 A. The policy?

17 Q. Yeah.

18 A. I know only from looking at records.

19 Q. And so what do you know from looking at
20 records?

21 A. 1982.

22 Q. Okay. What -- when was the first time
23 you ever discussed that policy with Simon?

24 A. I don't know if a first time I remember

1 discussing it with Simon is so much as learning
2 about the VEBA, because one of the things that
3 was done was file the 5500s for the death
4 benefit VEBA at S.B. Lexington, and so sometime
5 in the mid '80s, I became aware of the 5500, and
6 that it had to do with the policy, I believe I
7 learned through Richard Klink, who was Simon
8 Bernstein's partner in S.B. Lexington.

9 Q. Tell me what the 5500 is.

10 A. It's a form, tax filing form.

11 Q. And that's filed in order to obtain the
12 tax benefits that relate to the VEBA?

13 A. It's a -- yes, in part.

14 Q. What is it --

15 A. It's some -- it's a -- you know, just
16 like any benefit plan. You file a 5500.

17 Q. I'm not asking very good questions.

18 What was your role in dealing with that
19 is, I guess, what I'm trying to get at. Why did
20 you -- why did you become aware of it?

21 A. Mr. Klink showed it to me, told me
22 about the process he went through to file the
23 form. My father's company also had to do the
24 same thing for his policy.

1 Q. Was your father's company in any way
2 related to Mr. Bernstein's companies?

3 A. Not at all.

4 Q. What did you learn about the policy at
5 that time when you first learned its existence
6 when Mr. Klink showed you the 5500?

7 A. It was a policy on Simon's life, owned
8 by the VEBA, and the beneficiary was the VEBA.

9 Q. What's the next thing you -- strike
10 that.

11 After being told about its existence by
12 Mr. Klink, what's the next time you ever
13 conversed with anyone about it?

14 A. Well, probably conversed annually about
15 the policy because we would get annual
16 statements.

17 Q. What was the face policy -- I'm sorry.

18 What was the face amount of the policy?

19 A. When originally applied for?

20 Q. Yeah.

21 A. I believe \$2 million.

22 Q. Did it ever change?

23 A. There was borrowings against the
24 policy, so the death benefit was reduced.

1 Q. Did the face amount ever -- ever
2 change?

3 A. Face amount changes.

4 (Whereupon, a discussion was had
5 off the record.)

6 THE COURT: Let's go on the record, then, so
7 this is clear.

8 So Mr. Simon, what is the basis of your
9 objection to having Mr. Stansbury present? Is
10 he physically present or listening in?

11 MR. SIMON: This is Adam Simon. Our
12 objection is he's a nonparty to this case and
13 he's a potential witness, and I believe under
14 the witness exclusion rules, I think it's 615,
15 he should not be permitted to listen in on this
16 deposition, much less participate.

17 THE COURT: And is he physically there or
18 listening in on the phone?

19 MR. STAMOS: Listening in, Judge.

20 THE COURT: Okay.

21 MR. STAMOS: Yeah. Actually, what we -- what
22 we did was we asked him if we could exclude him,
23 pending your call, which we've done, so he
24 hasn't -- he hasn't heard any of the deposition.

1 THE COURT: Okay.

2 MR. STAMOS: And he -- if I may say, Judge,
3 he became involved because he asked the -- my
4 client, the estate, if he could attend, and they
5 were willing to have him attend, and I don't
6 think that witness exclusion rules would apply
7 to a -- to a deposition, which, of course, he
8 could read when it's done anyway, so I don't --
9 I don't think that there are any rules that
10 would prevent him from listening, and he
11 certainly may not participate. We don't -- we
12 don't -- he won't be allowed to participate.

13 THE COURT: And Mr. Simon, what's the
14 prejudice of having him present?

15 THE WITNESS: I just don't believe he's
16 entitled to be present, and from my quick
17 reading online, the witness exclusion rules do
18 apply to depositions, and I don't want his
19 testimony to be tainted by listening in or
20 possibly, you know, participating with counsel's
21 questioning of our witness.

22 THE COURT: If that's the basis of your
23 objection, that is overruled because the witness
24 exclusion under Rule 615 does not apply to

1 depositions. Rule 30C specifically says that.
2 It provides that deposition testimony should
3 proceed as if at trial, and the Federal Rules of
4 Evidence apply except for Rules 103 and 615, so
5 Rule 615 does not apply.

6 Your objection is overruled and he may
7 be present. He, of course, may not participate.
8 I will accept your representation with that, but
9 he may be present, listening in on the
10 deposition.

11 MR. SIMON: Okay.

12 THE COURT: So you should proceed forward and
13 he can listen in.

14 MR. SIMON: Thank you, your Honor.

15 MR. STAMOS: Thanks, your Honor.

16 THE COURT: Thank you.

17 MR. STAMOS: Appreciate it.

18 THE COURT: Bye.

19 (Whereupon, a discussion was had
20 off the record.)

21 BY MR. STAMOS:

22 Q. What I'm asking is the -- I understand
23 that the -- maybe I'm not using the terminology
24 correctly.

1 Was there ever a time that the stated
2 benefit of the policy was other than \$2 million?
3 I understand that the amount to be paid would
4 have varied based upon loans, but was there ever
5 a time that it was other than \$2 million or
6 greater than \$2 million?

7 A. I don't think I can answer the
8 question.

9 Q. Why not?

10 A. Because I don't understand what you're
11 saying.

12 Q. Okay. I buy an insurance policy. It
13 says a million dollars on it, a million dollars
14 of life insurance. I understand that there are
15 instances in which the payment of a million upon
16 someone's death might be reduced due to
17 intervening events, but the million -- piece of
18 paper still says a million on it, right?

19 Okay. Now, my question is: With
20 regard to the policy of '82, which is policy
21 No. 1009208, I think we can all agree that's
22 what it is, was there ever a time that the face
23 amount of that policy was ever greater than
24 2 million?

1 A. Not to my knowledge.

2 Q. All right. Are you aware at any point
3 at which an application was made to increase the
4 benefit amount from 2 million to 3 million?

5 A. Not to my knowledge.

6 Q. All right. So back to the -- you said
7 that there would be a discussion, likely
8 annually, about the -- about the policy. I take
9 it that would be because you'd have to file an
10 annual 5500?

11 A. Yes.

12 Q. All right. Other than that, when is
13 the next time you recall a -- strike that.

14 When was the first time you talked to
15 Simon Bernstein about the existence of that
16 policy, other than Mr. Klink?

17 A. 1987.

18 Q. All right. Who was present for that
19 conversation?

20 A. Dov Kahana, myself, and Mr. Bernstein.

21 Q. And Dov Kahana was Mr. Bernstein's
22 business partner?

23 A. In one of his businesses, yes.

24 Q. Okay. In which business?

1 A. Cambridge Associates.

2 Q. What was the business of Cambridge
3 Associates?

4 A. General insurance brokerage, I believe.

5 Q. Okay. What was the occasion for
6 discussing the 1982 policy?

7 A. Simon Bernstein was significantly in
8 debt and did not have the money to pay the
9 premium.

10 Q. Okay. What was the premium? Do you
11 recall?

12 A. No.

13 Q. And who said what to who in that
14 conversation about that topic?

15 A. Simon said to Dov we have to pay the
16 premium.

17 Q. Anyone else say anything in that
18 conversation?

19 A. I'm sure, but that was the gist of the
20 conversation.

21 Q. All right. What -- what came from
22 that?

23 A. I believe either the premium was paid
24 or they started to borrow against the cash value

1 to pay the premium.

2 MR. STAMOS: Bill, is that you?

3 MR. STANSBURY: I'm here.

4 MR. STAMOS: Got it.

5 MR. STANSBURY: Thank you.

6 BY MR. STAMOS:

7 Q. And at that time when you first spoke
8 to him -- Mr. Bernstein about it, were you aware
9 of who the beneficiary was? Was it still the
10 VEBA as far as you knew?

11 A. Yes.

12 Q. Did you become aware at any point of a
13 change in beneficiary?

14 A. Yes.

15 Q. When was that?

16 A. Sometime around 1995.

17 Q. And from whom and to whom was the
18 beneficiary changed?

19 A. Beneficiary was still the VEBA and a
20 contingent beneficiary was named as the
21 irrevocable life insurance trust.

22 Q. How did you become aware of that in
23 1995?

24 A. Saw the change of beneficiary forms,

1 helped Mr. Bernstein design the trust, and
2 signed off on the change of forms.

3 Q. Do you do trust work? Do you prepare
4 trusts?

5 A. I have. I don't regularly, no.

6 Q. All right. You're aware that there was
7 a -- that the claim here is that a 1995 trust
8 existed, correct?

9 A. I know a 1995 trust existed.

10 Q. Did Mr. -- prior to the -- to 1995 or
11 prior to the date designated as the date of the
12 reported trust of '95, did Mr. Bernstein ever
13 have another trust, prior trust?

14 A. Yes.

15 Q. Okay. What year was that trust?

16 A. The VEBA trust was, I believe, in the
17 early '80s.

18 Q. Did he ever have any other trusts that
19 you're aware of?

20 A. Subsequent to that or prior?

21 Q. Prior to 1995.

22 A. Not that I'm aware of.

23 Q. Tell me the first time you ever had a
24 conversation with Mr. Bernstein about a trust in

1 1995.

2 A. We discussed his making application for
3 additional death benefit. My wife and I had
4 just completed our own irrevocable life
5 insurance trusts and made applications to
6 Lincoln Benefit. He wished to get more
7 insurance. That was the first time.

8 Q. Okay. And when you say more insurance,
9 what insurance are you talking about? Are you
10 talking about adding the Lincoln Benefit policy?

11 A. More death benefit.

12 Q. On the Capitol Bank -- Bankers policy?

13 A. No. No, a new policy. More death
14 benefit for himself --

15 Q. Okay.

16 A. -- for -- on his life.

17 Q. All right. Did he do that?

18 A. Yes.

19 Q. And what company did he obtain that
20 insurance from?

21 A. Lincoln Benefit Life.

22 Q. Okay. That's the one you told me about
23 earlier?

24 A. Yes.

1 Q. Okay. And that's -- when you say he
2 owned another policy, you're saying that's a
3 policy that he -- that he initiated in 1995?

4 A. I believe that's the date.

5 Q. All right. And that's the policy that
6 you believed was not in force at the time of his
7 death?

8 A. I believe that's correct.

9 Q. And you think he added \$200,000 to the
10 death benefit?

11 A. I think the policy had a face amount of
12 \$200,000.

13 Q. Okay. Why did he want -- if he had a
14 policy that paid 2 million, why did he -- why
15 did he want 10 percent more?

16 MR. SIMON: Objection for speculation.

17 BY MR. STAMOS:

18 Q. Why?

19 A. I know he was trying to get as much
20 death benefit as he could. He was uninsurable
21 up until that point, and I believe this was a
22 highly rated policy also.

23 Q. All right. So tell me the first time
24 you and Mr. Bernstein had a conversation about

1 the trust. What did you say to him and what did
2 he say to you?

3 MR. SIMON: Can I just make a general point?

4 MR. STAMOS: Yeah.

5 MR. SIMON: There's -- there's so many
6 Mr. Bernsteins here that I think it's best if
7 you --

8 MR. STAMOS: That's fine.

9 MR. SIMON: Yeah.

10 MR. STAMOS: I have no problem.

11 BY MR. STAMOS:

12 Q. With regard to the 1995 trust that is
13 referred to in the complaint, in your complaint,
14 when was the first time you ever had a
15 conversation with Simon Bernstein about that?

16 A. 1995.

17 Q. And what did you say to him and what
18 did he say to you in the course of that
19 conversation?

20 A. It's privileged. I was acting as his
21 attorney at that time.

22 Q. So you were acting as his attorney with
23 regard to the trust?

24 A. In the first conversation, yes.

1 Q. Now, wait a minute.

2 A. Subsequently, I do not, but --

3 Q. Now, wait a minute. Let's get

4 organized here.

5 There's a complaint that's filed

6 describing your interactions with Mr. Bernstein

7 about that trust, which I assume you plan to

8 testify about?

9 A. Absolutely.

10 Q. But you're going to not testify about

11 the start of those conversation -- the first of

12 those conversations?

13 A. You know, in general, you asked me very

14 specific questions about what did he say and

15 what did I say.

16 Q. Right.

17 A. So in the first conversation, yes, he

18 came to me as an attorney, so I -- it's

19 privileged conversation.

20 Q. When did it stop being privileged?

21 A. Right after the first conversation.

22 Q. What made it stop being privileged?

23 A. I said I wouldn't act as his attorney

24 regarding the trust.

1 Q. Isn't what you told me just now
2 privileged?

3 A. No.

4 Q. Why not?

5 A. Because I said it after we discussed
6 it.

7 Q. Who else was present for this
8 conversation?

9 A. Just himself and I.

10 Q. Well, I take it you're going to refuse
11 to answer questions with regard to that
12 conversation, based upon privilege?

13 A. The first conversation.

14 Q. I'm sorry, I don't mean to be clever,
15 but explain to me again how that remains
16 privileged and -- and --

17 A. It's where I'm not acting as an
18 attorney for him, it's not privilege. It's his
19 privilege to assert.

20 Q. Does it -- does it survive his death?

21 A. As far as I understand, it does.

22 Q. And it can be waived by the estate?

23 A. Don't know.

24 MR. STAMOS: Does the estate have an

1 objection to Mr. Simon testifying about that
2 conversation?

3 MS. FOGLIETTA: Can you repeat that? It's a
4 little hard to hear.

5 MR. STAMOS: Yes. I've asked Mr. Simon about
6 the first conversation he had with Simon
7 Bernstein about the trust alleged to exist in
8 the complaint, and Mr. Simon has asserted a
9 privilege based upon -- an attorney-client
10 privilege with Mr. Bernstein regarding that
11 first conversation.

12 I don't frankly remember the law on
13 whether that privilege survives his death, but
14 assuming that it does, I believe the estate can
15 waive it, the estate controls it, so I asked
16 whether the estate has an objection to his
17 testimony about that first conversation.

18 MS. FOGLIETTA: No, no objection.

19 MR. SIMON: I will sus- -- or reassert the
20 objection, based on privilege. It's my
21 understanding that privilege does survive when
22 it is involved with an individual but not a
23 corporation. I don't think the estate has the
24 right to waive that privilege. I think

1 Mr. Simon has a duty to assert the privilege up
2 to the point where he was no longer acting as
3 the attorney with regard to the trust, and from
4 a practical standpoint -- well, I'll just leave
5 it at that.

6 MR. STAMOS: But who does control the
7 privilege if not the estate?

8 MR. SIMON: It just survives.

9 MR. STAMOS: Well, but I mean, it can't be
10 waived by anybody?

11 MR. SIMON: I don't believe it can.

12 MR. STAMOS: Well, I certainly think it can,
13 and the estate -- if the estate doesn't control
14 it, nobody controls it. It's not a -- it
15 doesn't -- I know --

16 MS. FOGLIETTA: I agree, and the estate
17 controls it.

18 MR. STAMOS: Yeah. So based upon the estate
19 having waived the privilege with regard to that
20 answer, I ask you to answer the question.

21 MR. SIMON: Could we go off the record for a
22 moment?

23 MR. STAMOS: Sure.

24

1 (Whereupon, a discussion was had
2 off the record.)

3 MR. STAMOS: Back on the record.

4 So we'll certify the question, deal
5 with it at a later time.

6 BY MR. STAMOS:

7 Q. Let's move on to the -- so following
8 this conversation with Mr. Bernstein that you
9 don't contend was privileged, what's the next
10 conversation or the continuation of that
11 interaction about the trust?

12 A. So I showed him the trust that I
13 received from Hopkins & Sutter. We discussed
14 how he would want that trust changed for him. I
15 mocked one up. I gave it to him and told him he
16 had to go to Hopkins & Sutter to have it
17 executed.

18 Q. All right. So when you say you showed
19 him the ones from -- the one from Hopkins &
20 Sutter, is that the one Hopkins & Sutter had
21 prepared for you?

22 A. Yes.

23 Q. And when you say you mocked it up, how
24 was that not practicing law for him?

1 A. I was not doing it as his attorney. I
2 was filling it in almost as a secretary for him
3 to change some of the names.

4 Q. Who was the lawyer at Hopkins & Sutter?

5 A. Jim Hammond, I believe.

6 Q. Say what?

7 A. James Hammond.

8 Q. James Hammond?

9 A. Yeah.

10 Q. Is he still -- I know Hop- -- I know
11 Hopkins is no longer in existence, but is he
12 still practicing?

13 A. No, he does not.

14 Q. How do you know?

15 A. He died.

16 Q. All right. Who is the lawyer at
17 Hopkins & Sutter -- strike that.

18 Did you -- did -- to your knowledge,
19 did Simon then -- Mr. Bernstein then interact
20 with Hopkins & Sutter?

21 A. I believe so.

22 Q. With whom?

23 A. I don't know.

24 Q. Was it Mr. Hammond?

1 A. I don't know.

2 Q. To your knowledge, was Hopkins & Sutter
3 involved in the execution of his trust?

4 A. I believe so.

5 Q. What makes you believe that?

6 A. Si said that Hopkins & Sutter or an
7 attorney at Hopkins & Sutter helped him execute
8 the will -- I mean the trust.

9 Q. Well, we'll get to that conversation in
10 a second, okay, and -- but you never learned who
11 it was there?

12 A. No.

13 Q. Did you ever tell Mr. Hammond I'm
14 sending over my father-in-law to do for him what
15 you did for me?

16 A. I did not. Simon had his own
17 relationships at Hopkins & Sutter.

18 Q. And with whom did he have
19 relationships?

20 A. Several folks.

21 Q. Who?

22 A. Henry Lawrie.

23 Q. Is Henry still alive?

24 A. I believe so.

1 Q. Okay. Who else?

2 A. Brad Ferguson.

3 Q. Okay. Who else?

4 A. I don't know.

5 Q. And of that -- of those two, do you

6 believe either of them participated with him in

7 creating this trust you talked about?

8 A. Be pure speculation.

9 MR. STAMOS: Off the record for a second.

10 (Whereupon, a discussion was had
11 off the record and a short
12 break was taken.)

13 MR. STAMOS: All right. We're back on.

14 BY MR. STAMOS:

15 Q. Well, in the declaratory judgment

16 portion of your complaint, it states that --

17 Paragraph 29: On or about June 21, 1995, David

18 Simon -- that's you, right? -- an attorney, and

19 Simon Bernstein's son-in-law met with Simon

20 Bernstein before Simon Bernstein went to the law

21 offices of Hopkins & Sutter in Chicago, Illinois

22 to finalize and execute the Bernstein trust

23 agreement.

24 You're familiar with that allegation?

1 A. I am.

2 Q. All right. Tell me what the facts are
3 surrounding the allegations in that
4 Paragraph 29.

5 A. Gave him a draft of the document to go
6 to Hopkins & Sutter to have it finalized and
7 executed.

8 Q. All right. And this is a document that
9 you had taken, the one that had been prepared
10 for you, and changed it to give effect to what
11 Simon -- for Simon. That's your testimony?

12 A. Yes.

13 Q. And was it in final form?

14 A. No.

15 Q. In what form was it?

16 A. Near final form.

17 Q. All right. And tell me what you and
18 Simon said to each other on the 21st before he
19 went to this meeting.

20 A. I believe I spoke to him the day before
21 and said I would make changes. I took notes on
22 another draft of the document and then utilized
23 those notes to have the document modified to
24 reflect those additional desires, and I handed

1 it to him.

2 Q. What was it that Mr. Simon told you
3 what he wanted the trust to do?

4 MR. SIMON: Strike -- objection on form.

5 MR. STAMOS: I'm sorry. You're right.

6 BY MR. STAMOS:

7 Q. What was it that Mr. Bernstein told you
8 he wanted the trust to do in that conversation
9 the day before the 21st?

10 A. Take care of his wife and children.

11 Q. And did you draft terms that would do
12 that, to the best of your ability?

13 A. Yes.

14 Q. Any other conversation you had with
15 Mr. Bernstein?

16 A. Yes.

17 Q. What did you say to him and what did he
18 say to you?

19 A. He asked me to be the trustee after
20 Shirley, and at first, I said yes, but at that
21 night, I thought about it and asked him to
22 remove me as trustee, and instead, replace it
23 sequentially with his children.

24 Q. And did you make changes to the form of

1 it at that point to give effect to that change?

2 A. No.

3 Q. What happened about that?

4 A. He took the draft that I had given him
5 and left.

6 Q. And then in Paragraph 30, it says after
7 the meeting, you reviewed the final version.

8 You recall those -- that allegation?

9 I'm paraphrasing, but that's what it says,

10 correct?

11 A. Yes.

12 Q. Was it that day?

13 A. I believe the day I reviewed it was the
14 day of the 21st, but it could have been the
15 22nd.

16 Q. All right. What did you say to him and
17 what did he say to you after that -- after that
18 meeting? Did you have -- strike that.

19 Did you have a conversation with him
20 after the meeting took place, whenever you first
21 had occasion to converse with, him about the
22 trust?

23 A. Thank you, and thank you for removing
24 me and replacing me with Ted, sign these forms

1 here and this form here and this form here.

2 Q. So when he brought it back to you, it
3 was not yet signed?

4 A. His was signed. I'm talking about the
5 change of owner -- I mean the change of
6 beneficiary forms that we would submit, as well
7 as the change of beneficiary forms for Lincoln
8 Benefit as -- and any other form that would need
9 to be submitted to the insurance carriers.

10 Q. So if we got the records of Lincoln
11 Benefit, we would see a beneficiary form
12 indicating that funds from that policy were to
13 be paid to a 1995 trust?

14 MR. SIMON: Objection, assumes facts not in
15 evidence, form.

16 THE WITNESS: I believe so.

17 BY MR. STAMOS:

18 Q. Have you ever tried to do that? Has
19 anyone on behalf of your family ever undertaken
20 to do that, to investigate the records of
21 Lincoln?

22 A. I know we called and asked to see if
23 they had a copy of the trust, but that's all
24 that I'm -- believe we've done.

1 Q. Did they have a copy of the trust?

2 A. Not to my knowledge.

3 Q. Now, what other documents -- strike

4 that.

5 He had already -- so when he came back
6 from Hopkins & Sutter, he had a signed document,
7 correct?

8 A. Correct.

9 Q. And he'd obviously left a copy with
10 Hopkins & Sutter, correct?

11 A. No idea.

12 Q. Now, we're both lawyers. We've both
13 been in the business a long time. I've never,
14 ever, ever heard of a -- of a firm that drafts a
15 trust and doesn't keep a copy, in the word
16 processor, if no place else, but executed copy.

17 Did you call Hopkins & Sutter to see
18 whether there's a -- there's a document -- a
19 copy of this document in their files?

20 A. Well, Hopkins & Sutter no longer
21 exists, but we did follow up with their
22 successor firm, as well as some of the attorneys
23 who broke away from Hopkins & Sutter and started
24 their own firm.

1 Q. Okay. And what did you find?

2 A. Neither had a copy of the executed

3 trust.

4 Q. Who did you talk to? And who did the

5 talking for you if not you?

6 A. Yeah, I don't know.

7 Q. You don't know who you talked to -- I'm

8 sorry.

9 You don't know who was spoken to at --

10 for those lawyers?

11 A. Right.

12 Q. Who made the contact with them?

13 A. I'm not sure. I'd have to look.

14 Q. What are the -- what are the choices?

15 A. Anybody in our offices.

16 Q. Well, probably not anybody in your

17 office.

18 I mean, who do you think are the likely

19 candidates to have done the investigation to

20 determine whether the trust existed?

21 MR. SIMON: Objection, asked and answered.

22 THE WITNESS: Could be anyone that's in our

23 office that was just assigned to make the phone

24 call. I mean, I don't know.

1 BY MR. STAMOS:

2 Q. Who asked them to do it?

3 A. Might have been Pam, might have been
4 me, might have been Adam.

5 Q. So when the complaint says -- refers
6 to the -- let me see if I can pull up the
7 correct page here.

8 MR. SIMON: Can we get a copy of the
9 complaint?

10 MR. STAMOS: I don't know if we have a copy
11 here. I don't -- I don't intend to make it an
12 exhibit, but I could make you a copy if you need
13 to.

14 BY MR. STAMOS:

15 Q. So where the complaint says in
16 Paragraph 35, as diligent searches were made of
17 Ted Bernstein and the other Bernstein family
18 members; of Simon Bernstein's home and business;
19 the law offices of Tescher & Spallina; the
20 offices of Foley & Lardner, successor to
21 Hopkins & Sutter; and the office of the Simon
22 Law Firm, who -- who is it who investigated,
23 first of all, with respect to the offices of
24 Foley & Lardner?

1 A. I don't know the person's name off the
2 top of my head. I'd have to look.

3 Q. I don't mean to be clever, but that
4 sounds like an awful important issue for this
5 whole litigation. I find it kind of astonishing
6 that it could have been a secretary that called
7 and gave -- came up with the answer. I mean, is
8 that really what might have happened?

9 A. I don't find it astonishing. We work
10 in the business, so it's not a big deal to make
11 a phone call, so it's very possible.

12 Q. Okay. But you don't know who was
13 spoken to at the -- at Foley & Lardner?

14 MR. SIMON: Objection, asked and answered.

15 THE WITNESS: Not as I sit here today.

16 BY MR. STAMOS:

17 Q. Okay. Who made the -- who investigated
18 the -- in the offices of the Simon Law Firm to
19 see whether a copy existed?

20 A. Myself, Adam Simon, and Cheryl
21 Sychowski.

22 Q. And the law offices of Tescher &
23 Spallina, who investigated there?

24 A. I don't know.

1 Q. And how about Ted Bernstein -- about
2 Ted Bernstein and Simon Bernstein's home and
3 business office?

4 A. I don't know.

5 Q. Who would I -- whose deposition would I
6 take to find out about that, to find out the
7 answers to those questions?

8 A. I don't know.

9 Q. So nobody might know?

10 A. Well, I would -- I would assume that in
11 Tescher & Spallina, you would ask Tescher &
12 Spallina --

13 Q. That's the easy way.

14 A. -- and Ted Bernstein, you would ask Ted
15 Bernstein, and for Simon Bernstein, you would
16 probably ask Tescher & Spallina.

17 Q. All right. And after you have this
18 conversation with Mr. -- with Simon Bernstein
19 when he came back from the office, what's the
20 next time you had a conversation with him about
21 his -- about that trust?

22 A. After we changed the beneficiaries, I
23 don't believe I had a subsequent conversation
24 until he mentioned it in 2012.

1 Q. Okay.

2 A. Actually, he didn't mention the trust.

3 He mentioned the insurance policy.

4 Q. All right. We'll get to that in just a

5 second.

6 At the time that -- in 1995, were you
7 and he working in the same office, physically?

8 A. He had an office there. He seldom came
9 to Chicago. He was living in Florida.

10 Q. Okay. Was there a time when he stopped
11 coming to Chicago?

12 A. He no longer had an office in Chicago
13 in 1996, but he has family here.

14 Q. You've seen this 2000 trust, correct?

15 MR. SIMON: Objection. You're referring to
16 some other trust. We'd like to see it.

17 MR. STAMOS: Do you have a copy?

18 MS. FOGLIETTA: It's a little hard to hear.

19 Would you mind speaking up a little?

20 MR. STAMOS: Yeah, I will.

21 BY MR. STAMOS:

22 Q. Well, before I show that to him, let --

23 let me ask you this: Did you have any

24 conver- -- when's the next -- after 1995,

1 this -- the June 1995 event we've been
2 discussing, what's the next time you had a
3 conversation with Simon Bernstein about any
4 trust?

5 A. Well, I don't know how long it took to
6 complete the change of beneficiary forms and
7 have them come back, but after that process?

8 Q. Yes.

9 A. I don't believe I spoke to him about
10 the trust again.

11 Q. Okay.

12 A. Until the 2012, and again, the
13 reference was more to the policy and not the
14 trust.

15 Q. Okay. So let's talk about that, then.
16 So if we're thinking about two -- two concepts,
17 the existence of the insurance policy that we're
18 all litigating about and the existence of the
19 trust, what you're telling me is, after whatever
20 took place in this -- 1995 took place with
21 regard to a new beneficiary and so forth, you
22 never had a conversation with him about either
23 thing until 2012, and at that time, you had a
24 conversation about the insurance policy?

1 A. Did have a conversation with him about
2 the policy, yes.

3 Q. Okay. And when in 2012?

4 A. No, no. In 1998.

5 Q. Oh.

6 A. But I didn't have another conversation
7 about...

8 Q. All right. '98's a new year for us, so
9 let's talk about that.

10 What -- who was present for the
11 conversation in 1998?

12 A. Myself and Mr. Bernstein.

13 Q. And what did you say to him and what
14 did he say to you?

15 A. Let's voluntarily dissolve the S.B.
16 Lexington VEBA and S.B. Lexington Corporation.

17 Q. Okay.

18 A. And I voluntarily dissolved them.

19 Q. All right. Was there a discussion
20 about the wisdom of that or why do it? Why do
21 it?

22 A. There was a discussion about the wisdom
23 of that.

24 Q. Okay. I'd like you to tell me what you

1 said to him and what he said to you in that
2 conversation.

3 A. I said let's dissolve S.B. Lexington
4 and you've got a lot of tax issues that you need
5 to bury, and the quicker we do it, the better.

6 Q. Okay. Did he agree to that?

7 A. Yes.

8 Q. All right. What did he say to you in
9 that conversation?

10 A. Dissolve the corporation.

11 Q. Did you perform the work necessary to
12 achieve that?

13 A. I did.

14 Q. And other than discussing the
15 dissolution of the VEBA, what other conversation
16 was there, if any, about the insurance policy?

17 A. That the death benefit would now go to
18 the contingent beneficiary, which is the 1995
19 irrevocable life insurance trust.

20 Q. And was there any other discussion at
21 that time?

22 A. No.

23 Q. Was there ever another discussion about
24 the insurance policy before he died?

1 A. 2012.

2 Q. All right. And where did that
3 conversation take place?

4 A. I was on the telephone.

5 Q. And did you call him or did he call
6 you?

7 A. I believe he arranged a conference
8 call. I don't remember if everyone was called
9 or we called in to a number, but there was a
10 conference call amongst the children, some of
11 the spouses, Mr. Spallina, and Simon Bernstein.

12 Q. Okay. And what -- who said what to
13 whom in that conference call?

14 I'm sorry. Let me interrupt myself for
15 a second.

16 What was the date of that call, the
17 best you can recall?

18 A. A few months before he died. I don't
19 know.

20 Q. All right. And he was in Florida at
21 that time?

22 A. I wasn't there, but I believe he was in
23 Florida.

24 Q. Okay.

1 A. He was on the phone, so I can't tell
2 you really where he was.

3 Q. Okay. And tell me what everybody said
4 in that conversation to the best you can recall.

5 A. The gist of it was that Simon was going
6 to change his will and estate to leave his
7 estate and trust to the ten grandchildren, that
8 the life insurance policy proceeds would go to
9 the five children, and that he hoped this would
10 end some of the acrimony within the family.

11 Mr. Spallina introduced Simon and
12 introduced the reason for the call, then each of
13 the children were asked to agree, and each of
14 the children agreed, even though, in my mind,
15 they didn't have to agree anyway.

16 Q. When you say that he was referring to
17 disputes in the family, what was that about?

18 A. He felt that there was a lot of
19 acrimony within the family.

20 Q. About what?

21 A. A whole number of things, as far as I
22 know. His girlfriend, his treatment of some of
23 the children and grandchildren.

24 Q. In what way treatment? Financially?

1 MR. SIMON: Object, relevance.

2 THE WITNESS: You're asking my opinion? I

3 would say emotionally, but financially, if, you

4 know, if you mean two of the children had a

5 clause inside of a trust that if in certain

6 instances, they would be disinherited, and that

7 translated down to the lineal descendants of the

8 two.

9 BY MR. STAMOS:

10 Q. And who were the children who would

11 have been disinherited?

12 A. In this narrow exception, it would have

13 been Pam and Ted and their children.

14 Q. And what would have -- what was the

15 narrow exception?

16 A. All for distributions made under a

17 trust.

18 Q. Was there any further discussion in

19 that conversation about the insurance policy

20 beyond what you've described?

21 A. Just that it was left to the five

22 children.

23 Q. At the time that you were involved in

24 that conversation, were you aware of whatever

1 trusts existed at that time?

2 A. I was aware of the 1995 trust. I was
3 not aware of any other trusts.

4 Q. When did you become --

5 A. Other than -- you're talking about
6 Simon's life in- -- are you talking about life
7 insurance trusts?

8 Q. No, no. Just trusts.

9 A. I was aware -- I was aware of Shirley's
10 trust.

11 Q. You've since learned of a series of
12 trusts that Simon Bernstein executed, correct?

13 A. Some. I don't know if I'd call it a
14 series, but --

15 Q. Well, you're aware that he -- that
16 after 19 -- that after the year 1995, his
17 signature appears on trusts in a number of
18 successive -- succeeding years, not in -- not
19 years in a row, but a number of years -- start
20 again.

21 After the year 1995, you're aware
22 that -- you are now aware that there are trusts
23 dated in various years between 2000 and 2012,
24 right?

1 MR. SIMON: Object, speculation.

2 THE WITNESS: I'm aware of one other trust,
3 yes.

4 BY MR. STAMOS:

5 Q. Which other trust are you aware of?

6 A. I saw it in the litigation. I think it
7 was drafted by somebody at Proskauer Rose.

8 Q. And what year was that trust?

9 A. I'd have to see it. If you showed it
10 to me, I would --

11 Q. Okay. I guess what I'm asking is: Are
12 you currently aware, beyond the trust that was
13 drafted by the Proskauer firm, are you aware
14 today of any other trusts that Mr. -- that Simon
15 Bernstein executed prior to his death?

16 A. Yes. There is the Simon Bernstein
17 Trust that has to do with his, you know, last
18 will and trust.

19 Q. All right. Are you aware of any
20 intervening trusts before then -- between 1995
21 and before the trust that you believe you're
22 aware of?

23 A. And the 2000 one I spoke about?

24 Q. Right. Any others?

1 A. No.

2 Q. All right. What's your understanding
3 of the significance of the -- of the trust the
4 Proskauer firm prepared?

5 MR. SIMON: Objection, calls for speculation.

6 THE WITNESS: I'm not aware of any
7 significance.

8 BY MR. STAMOS:

9 Q. Have you ever made any analysis of its
10 relevance to this litigation or to your position
11 or your family's position in this litigation?

12 A. No.

13 Q. Am I correct, if you're successful in
14 this litigation, your wife will receive
15 roughly a -- a fifth of whatever the proceeds
16 are that are -- have been paid into court,
17 correct?

18 A. Yes.

19 Q. What does that calculate out to about,
20 350,000, 300,000, something like that?

21 MR. SIMON: Object, speculation.

22 MR. STAMOS: Well, it's math. It's
23 arithmetic.

24

1 BY MR. STAMOS:

2 Q. Have you ever done the math? I've got
3 334,000. Does that sound about right?

4 A. It could be correct, yes.

5 Q. All right. That's all I'm asking.

6 But that's how much she would receive,
7 correct?

8 MR. SIMON: Object to speculation.

9 THE WITNESS: Pre-fees, yes, I believe so.

10 BY MR. STAMOS:

11 Q. Okay. All right. Now, have you ever
12 had conversations with -- well, strike that.

13 When did you first become -- when was
14 the first attempt made to locate the 1995 trust
15 document?

16 A. I believe some times in the winter of
17 2012, 2013.

18 Q. And what was the first steps taken to
19 locate it?

20 A. I don't believe I took the first steps.
21 I believe --

22 Q. Who did?

23 A. Whoever had Si's documents and
24 materials. Somebody in Florida.

1 Q. Who?

2 A. I don't know, but I -- you know, I
3 would guess Donald Tescher and Robert Spallina.

4 Q. Okay. And do you recall being advised
5 that they were unable to locate such a document?

6 A. Yes.

7 Q. When did Spallina first become aware
8 that there was a -- that there was purportedly a
9 1995 document?

10 A. I don't know.

11 Q. He must have -- according to your
12 testimony, he must have been aware of that prior
13 to the conversation or certainly during the
14 conversation, the conference call you described,
15 correct?

16 A. I assume, but I don't know when that
17 happened. He may have become aware of it in
18 2005 or 2000 --

19 Q. Truly.

20 A. I have no idea.

21 Q. Truly. But certainly no later -- when
22 that conversation started, it wasn't your
23 impression that as Simon Bernstein was
24 describing the policy that that was the first

1 time Spallina ever heard about it, correct?

2 A. I was unaware if it was under that
3 trust or any other trust during that
4 conversation.

5 Q. I see. So at that point, that
6 conversation, you would have been unaware
7 whether the trust that Simon Bernstein was
8 referring to as being the beneficiary for the
9 policy would have been a 1995 trust or some
10 other trust?

11 MR. SIMON: Objection. It's facts not in
12 evidence.

13 MR. STAMOS: That's a speaking objection.
14 There aren't facts in evidence because we're
15 talking -- we're getting the evidence now here,
16 so --

17 THE WITNESS: But I don't believe I said what
18 you said. I --

19 BY MR. STAMOS:

20 Q. I misunderstood you, then.

21 A. Yeah. I don't think he referred to a
22 trust in the phone conversation. I think he
23 referred to the proceeds of the policy.

24 Q. Okay. And when is -- to your

1 knowledge, when is the first time that
2 Mr. Spallina would have become aware that there
3 was a purported 1995 trust?

4 MR. SIMON: Objection, speculation.

5 THE WITNESS: No idea.

6 BY MR. STAMOS:

7 Q. Who was the principal contact with
8 Mr. Spallina after Simon Bernstein died, on
9 behalf of the family?

10 A. I assume Ted Bernstein, but I don't
11 know for sure.

12 Q. Did you have any conversations with
13 Mr. Spallina?

14 A. Right after his death, no. Have I had
15 conversations with Mr. Spallina, yes.

16 Q. And did Mr. Spallina ever -- did you
17 ever have conversations with him about the trust
18 itself?

19 A. Yes.

20 Q. And about its creation?

21 A. I believe so.

22 Q. When was the first time you had such a
23 conversation?

24 A. Be the winter of '12-'13.

1 Q. Was there ever a discussion with him
2 about this trust that was executed in 2000 --

3 MR. STAMOS: What's the date of that trust?

4 MR. HORAN: August 15th.

5 MR. STAMOS: Of what year?

6 MR. HORAN: 2000.

7 BY MR. STAMOS:

8 Q. Did you ever have a conversation with
9 Mr. Spallina about a trust that was executed by
10 Mr. Simon Bernstein in August of 2000 --
11 August 15th of 2000?

12 A. I'm not sure.

13 Q. When did you first become aware that
14 such a document might exist?

15 A. During the course of the litigation.

16 Q. And did you have any conversations with
17 Mr. Spallina once you learned of its existence?

18 A. I'm not sure it was Mr. Spallina.

19 Q. Who did you talk to?

20 A. I believe it was Alan Rose.

21 Q. Who's Alan Rose?

22 A. He's an attorney.

23 Q. With who?

24 A. I don't remember the firm.

1 Q. Why Mr. Rose?

2 A. Oh, he was representing Ted Bernstein,
3 and during the course of the conversation, Eliot
4 Bernstein had brought up the 2000 trust in one
5 of his pleadings, and Mr. Rose said it was
6 unfunded, and it's very possible Mr. Spallina
7 echoed that sentiment.

8 Q. Unfunded in what sense?

9 A. That there's no res in the trust.

10 Q. Were there any -- was there ever any
11 discussion of the fact that that trust had
12 indicated that one of its assets was a -- the
13 1982 insurance policy?

14 A. I think that was the conversation I
15 just referred to.

16 Q. Right. And did anyone -- I mean, it
17 wasn't funded, but did anyone discuss the
18 significance or the relevance of the
19 relationship of that trust to the proceeds of
20 the '82 policy?

21 A. Just that it was to be ignored.

22 Q. Because -- because it had never been
23 made a beneficiary of the -- of the policy?

24 A. Because it was unfunded.

1 Q. I don't know what that means.

2 A. No race.

3 Q. I know that. That wasn't my question,
4 though.

5 There would be a race if the proceeds
6 of the policy were paid into it, correct?

7 MR. SIMON: Objection, facts not in evidence.

8 THE WITNESS: Not necessarily. Probably it
9 would have been held in constructive trust for
10 the beneficiary, but because it was never named
11 a beneficiary of the policy, it was --

12 BY MR. STAMOS:

13 Q. That's what I'm getting at. All I'm
14 trying to -- I'm not trying to be tricky. All
15 I'm -- my only point is your understanding was
16 the 2000 trust was not relevant here because it
17 had never been made a beneficiary of the policy
18 from '82?

19 A. And that Simon didn't wish it to be.

20 Q. How did you conclude that?

21 A. That's what I was told.

22 Q. By whom?

23 A. I believe either Mr. Rose or
24 Mr. Spallina.

1 Q. They told you that Mr. Simon had told
2 them something about the -- about the -- his
3 desires about the 2000 trust?

4 A. Correct.

5 Q. Had he told them that he had intended
6 it to be paid to the '95 trust?

7 A. To the five children.

8 Q. So just so we're clear, at no point --
9 I think this is what you're telling me: At no
10 point did Mr. Spallina say Simon Bernstein told
11 me that the proceeds of the '82 policy would be
12 paid to a '95 trust. He never said that,
13 correct?

14 A. I don't know.

15 Q. Well, you don't -- you don't remember
16 him saying that, do you?

17 A. I remember him saying something like
18 that he talked about Mr. Bernstein contemplating
19 changing the beneficiary to his girlfriend at
20 the time, and that instead, he decided to leave
21 it as the five children through the trust, but I
22 don't know that he used the word 1995 at that
23 point.

24 Q. All right. Because if Mr. Bernstein --

1 if Mr. Spallina had been aware of the existence
2 of a 1995 trust, you would agree with me a
3 prudent attorney would have asked to obtain a
4 copy of that trust, correct?

5 A. I believe he did.

6 Q. He asked Mr. Bernstein for that?

7 A. It's my understanding.

8 Q. And what -- and what became of that?

9 A. I don't know.

10 Q. He never received it, though, did he?

11 A. I assume not, but I don't know because
12 he didn't produce it.

13 Q. Who are you aware heard Mr. Spallina
14 say anything that referred to the existence of a
15 1995 trust?

16 A. All of the children.

17 Q. In what conversation?

18 A. Discussing how to have the proceeds of
19 the trust paid to the --

20 Q. This was after death?

21 A. Pardon me?

22 Q. Was this after Simon's death?

23 A. Yes.

24 Q. Okay. Go on. I'm sorry. I wasn't --

1 A. That's the winter of '12-'13.

2 Q. Right. But --

3 A. He died in September, so all the

4 conversations I'm talking about --

5 Q. Are all after death.

6 A. -- are all during that period.

7 Q. But just to revisit it, prior to Simon

8 Bernstein's death -- I don't usually get --

9 sound so formal, Simon Bernstein, but just to

10 keep it clear, I'm going to do that.

11 Prior to Simon Bernstein's death, you

12 are unaware of any conversation in which

13 Mr. Spallina reported or said anything that

14 implied that he was aware that a 1995 trust

15 existed; am I correct?

16 A. Just the conversation that I referred

17 to in the preceding months.

18 Q. Okay. But I don't think -- but I

19 think -- I thought I understood you to say in

20 that conversation you don't remember him saying

21 the word "trust"?

22 A. Correct.

23 Q. All right. Now, you're aware, I take

24 it, that the 2000 trust, the terms of that

1 trust, if it were given effect, would have

2 excluded your wife, correct?

3 A. I have not read the trust.

4 Q. Why not?

5 A. No reason to read it.

6 Q. Why not?

7 A. There's just no reason to read it.

8 Q. Okay. Let's go to a different topic.

9 Do you know Don Sanders?

10 A. Don Sanders?

11 Q. Yes.

12 A. No, I do not.

13 Q. Okay. And how -- do you know how it

14 came to be his affidavit was prepared?

15 A. I do know, yes.

16 Q. How?

17 A. Attorney representing the trust sought

18 to seek the deposition of someone from the

19 servicer for the insurance company and served a

20 notice of deposition and that in the course of

21 negotiating that deposition, they agreed to

22 provide an affidavit.

23 Q. Who drafted the affidavit?

24 A. I don't know.

1 Q. Who do you think drafted the affidavit?

2 MR. SIMON: Objection, speculation.

3 BY MR. STAMOS:

4 Q. I'm not asking you to speculate, but do
5 you have a -- you have a -- did you ever talk to
6 find out any --

7 MR. SIMON: He said he didn't know -- and he
8 said he didn't know, and then you said who do
9 you think. You're definitely asking him to
10 speculate. He doesn't know.

11 MR. STAMOS: No. There are all sorts of
12 things I think things about that aren't
13 speculation, but I also don't know. I mean,
14 there are gradations to knowledge.

15 THE WITNESS: I would be guessing, but
16 there's --

17 MR. SIMON: Don't guess.

18 BY MR. STAMOS:

19 Q. Okay. Let's see. Aside from
20 discussions regarding a trust in 1995, did you
21 do any other -- did you assist Simon Bernstein
22 in any other way in his personal affairs from
23 1995 forward?

24 A. Yes.

1 Q. Like what?

2 A. Bill paying, litigation, day-to-day
3 operation of his companies, and occasionally
4 purchasing gifts for some of his family members,
5 and tickets for himself.

6 Q. Did you practice law for him after
7 1995? Obviously litigation. I assume that
8 would be practicing law for him.

9 A. Yes.

10 Q. What kind of litigation would you help
11 him with?

12 A. Depends what came up. Litigation
13 mostly with 1995 would be ex-business partner.

14 Q. Who was that?

15 A. Joseph Flanagan.

16 Q. Was that just litigation over payouts
17 from the business or was there some other issue
18 involved? Money out of the business?

19 A. Yes.

20 Q. Were you aware of the handwritten will
21 that Simon Bernstein prepared?

22 A. No.

23 Q. You're not aware of that now?

24 A. Nope.

1 Q. Have you had occasion to review the
2 records of that -- that were produced by the
3 insurance company in this case? Have you seen
4 any of them?

5 A. I might have.

6 Q. Do you think you did?

7 A. I think so.

8 Q. Did you ever assist -- other than 1995
9 as you've described, was there ever another
10 occasion in which you were aware of another
11 beneficiary designation form being sent to or
12 from the insurance company regarding the 1982
13 policy?

14 MR. SIMON: Objection as to form.

15 THE WITNESS: I'm not sure I understand what
16 you asked just now.

17 BY MR. STAMOS:

18 Q. Well, if a policy is going to have a
19 beneficiary change, there's usually a form that
20 has to be filled out, correct?

21 A. Correct.

22 Q. And where someone requests to change a
23 beneficiary, the insurance company might send
24 out the form to them to fill out, correct? To

1 prepare?

2 A. Sure. I guess.

3 Q. And likewise, if someone wants to
4 effect a change of beneficiary and they have the
5 form, they fill it out and send it to the
6 insurance company. That's one of the things
7 they could do, correct?

8 A. Sure.

9 Q. All right. Are you aware of any such
10 communications between the insurance company and
11 Mr. Bernstein about the 1982 policy following
12 1995?

13 A. Other than the 1998 dissolution of the
14 VEBA trust, I'm not aware of any other forms.

15 Q. And I take it that you -- were you
16 aware that there were a number of instances in
17 which the policy lapsed and had to be revived,
18 so to speak, reinstated?

19 A. I'm aware of one.

20 Q. Did you participate in any of the
21 documentation with regard to any instance of
22 reinstatement?

23 A. I did not.

24 Q. Who did?

1 A. I don't know. I assume Mr. Bernstein,
2 Simon Bernstein.

3 Q. When -- which reinstatement were you
4 aware of?

5 A. I don't know. I didn't know there was
6 multiple. I'm only aware of one, so I can't
7 tell you --

8 Q. Well, but I mean, which -- what year
9 was that?

10 A. Oh, I don't know when it was. I just
11 knew that it had lapsed once, then needed to be
12 reinstated.

13 Q. Do you know where the insurance company
14 would send forms or communications regarding the
15 policy -- well, strike that.

16 To your knowledge, would the -- would
17 the insurance company send communications about
18 the insurance policy to your office at any time?

19 A. Up until 1996, I believe so.

20 Q. Okay. How about after that?

21 A. Probably not.

22 Q. If a communication were sent by the
23 insurance company to your office, that would
24 come to your attention, wouldn't it?

1 A. Not necessarily, no.

2 Q. Whose attention would it go to?

3 A. Depends if it -- who it was addressed

4 to. If it was addressed to him, it may have

5 just been -- come to our office and forwarded

6 from our offices. If it was addressed to

7 something more general, then it probably would

8 have been opened by Pam Simon.

9 Q. Okay. It's fair to say, though, that

10 if you had come into possession of

11 communications that could bear on the continuing

12 existence of the policy, you would want to make

13 sure that was dealt with, correct? You wouldn't

14 want the policy to lapse because, as far as you

15 were concerned, your wife was a one-fifth --

16 one-fifth indirect beneficiary of that policy,

17 correct?

18 A. Not correct.

19 Q. Why not? What's not correct about

20 that?

21 A. I would be indifferent as to whether

22 the policy lapsed, just as I was when the policy

23 lapsed.

24 Q. When did you first learn it lapsed?

1 A. I want to say after he passed away.

2 Q. So you weren't -- so during his
3 lifetime, you were unaware of it having lapsed?

4 A. Correct.

5 Q. Oh, okay. So when you say it was --
6 you were indifferent to it, you never had the
7 occasion to be indifferent to it when there was
8 still something to be done about it, right?

9 A. Well, I know I was indifferent about it
10 because it was a discussion about how to pay for
11 it during the time and he had no other assets,
12 and so this was the way he wanted to take care
13 of his wife, and at that time, I was not
14 indifferent to it.

15 Q. I see. I'm not following. So --

16 A. Well, I thought with no other assets,
17 that his wife needed to be taken care of, and
18 that should be a priority, along with repaying
19 his debt.

20 Q. Okay. Two things. When you say
21 repaying his debt, to whom was the debt?

22 A. Several people.

23 Q. Who?

24 A. Exchange Bank, Harris Bank Glencoe,

1 Boulevard Bank, Capitol Bankers Life, Fidelity
2 Union, and there were a couple of others that
3 I -- I'm not -- off the top of my head but I
4 believe had to do with condominiums owed that
5 were under water, and I can't tell you the exact
6 names.

7 Q. I think I might have missed -- I might
8 have -- might be misunderstanding what you said.

9 Were you aware during his lifetime that
10 the policy had lapsed?

11 A. No.

12 Q. Okay.

13 A. While he was alive was I --

14 Q. Yes.

15 A. No.

16 Q. All right. But you're saying that
17 after he died, you learned that it had lapsed
18 and it had to be paid?

19 A. No.

20 Q. So what could all of that have to do
21 with taking care of his wife? She was dead by
22 then, right?

23 A. Yeah. You asked me if I was ever
24 indifferent, and during the early '90s, I was

1 not indifferent.

2 Q. Oh, I'm sorry. I thought -- I meant
3 you were indifferent to it at having lapsed.
4 That's what I was referring to. I'm sorry. I
5 confused myself.

6 A. Okay. I was speaking of decades
7 before.

8 Q. Got it, got it.

9 MR. STAMOS: Let me step outside just for a
10 second with Kevin.

11 (Whereupon, a discussion was had
12 off the record and a short
13 break was taken.)

14 MR. STAMOS: All right. We're going to go
15 back on. We just have a few more questions.

16 BY MR. STAMOS:

17 Q. When -- to your knowledge, what -- who
18 made the first approach to the insurance company
19 with regard to the policy?

20 A. Simon Bernstein.

21 Q. No, no. I'm sorry.

22 After Simon's death, who's the -- who
23 was the person who made the first communication
24 to the insurance company with regard to

1 obtaining payment of the proceeds?

2 A. I don't know.

3 Q. Do you recall being part of any
4 conversations or becoming aware of any
5 conversations that took place prior to that
6 approach being made?

7 MR. SIMON: Objection, facts not in --

8 THE WITNESS: I don't know if it was prior to
9 or subsequent to the first approach.

10 BY MR. STAMOS:

11 Q. And when was the first approach -- I'm
12 sorry. Mr. Bernstein died in September of 2012?

13 A. Simon Bernstein?

14 Q. Yes.

15 A. September of 2012.

16 Q. And when was the first approach made to
17 the insurance company?

18 A. I don't know.

19 Q. When was the first conversation you had
20 with anyone after Simon Bernstein's death about
21 making an approach to the insurance company?

22 A. I believe in the winter of '12-'13.
23 December, January, right in there.

24 Q. And why then, not more proximate to the

1 time of his death?

2 A. That's the first conversation I had. I
3 don't know. That's why I said it's very
4 possible that a prior approach had been made.

5 Q. And with whom did you have the first
6 conversation about it?

7 A. I don't know who. It was all on the
8 phone, but Robert Spallina for sure was on the
9 phone. Ted Bernstein. I believe Lisa
10 Friedstein.

11 Q. Okay.

12 A. Jill Iantoni. Eliot might have been on
13 the phone. I don't know.

14 Q. Okay. And who said what to whom in
15 that conversation?

16 A. Does anybody have a copy of the
17 insurance policy.

18 Q. All right. And --

19 A. And does anybody have a copy of the
20 life insurance trust.

21 Q. And who initiated that call?

22 A. I don't know.

23 Q. Do you know, when the first submission
24 was made to the insurance company, do you know

1 who made it as trustee? Who was identified as
2 the trustee of the trust of that communication?

3 A. I don't know if anyone was identified
4 as trustee on the first submission.

5 Q. Have you ever seen the first submission
6 of the document?

7 A. I don't know if it was the first
8 submission. I don't know what -- I -- I can't
9 tell what would be the first submission.

10 Q. Right, right. Have you seen a document
11 that -- that you believe to have been the first
12 submission?

13 A. I would have no belief of whether it
14 was the first or second or third submission.

15 Q. Have you seen any documents that you
16 understand to have been a submission?

17 A. Yes.

18 Q. And who was identified -- did you see
19 one or more than one?

20 A. I've seen more than one.

21 Q. And in those, who was identified as
22 trustee?

23 A. In one, I don't know that anyone was
24 identified as trustee, and in the other one, I

1 believe Robert Spallina identified himself as
2 trustee.

3 Q. Okay. And was he the trustee?

4 A. No.

5 Q. Then why did he identify himself as
6 trustee?

7 MR. SIMON: Objection, speculation.

8 THE WITNESS: Ask Robert Spallina.

9 BY MR. STAMOS:

10 Q. Were you surprised to see him
11 identified as trustee when you -- when you read
12 it?

13 A. Yes.

14 Q. And did you discuss that with anyone?
15 Did you discuss the fact that he was identified
16 as the trustee when you knew that, to your
17 knowledge, he would not have been the trustee?

18 A. I discussed it before filing this
19 litigation, yes.

20 Q. With whom?

21 A. Adam Simon.

22 Q. Okay. And what did you --

23 A. Ted Bernstein.

24 Q. And what did you say to Adam and what

1 did he say to you?

2 MR. SIMON: Objection, attorney-client.

3 BY MR. STAMOS:

4 Q. You're not a party to this litigation,

5 are you?

6 A. No.

7 MR. SIMON: Yes, he is.

8 THE WITNESS: It's true. I am. Eliot sued

9 me.

10 BY MR. STAMOS:

11 Q. Well, at the time that the suit was

12 filed -- prior to the time the suit was filed,

13 you were not to be a party, correct? How could

14 you be a party? You never understood yourself

15 to be a beneficiary of either the trust or

16 the -- or the policy, correct?

17 A. That's correct.

18 Q. So when the suit was brought in order

19 to obtain proceeds of the policy and presumably

20 proceeds of the trust, you couldn't have been

21 suing on your own behalf, right?

22 A. I was not.

23 Q. So he wasn't representing you?

24 A. No.

1 Q. So what did he say to you and what did
2 you say to him?

3 A. I said that Spallina is not the
4 trustee. Ted is.

5 Q. Okay.

6 A. I saw the trust. I know Ted's the
7 trustee because that was one of the things that
8 needed to be changed in the draft, and I wasn't
9 positive that that was changed.

10 Q. Okay. Now, tell me this: You -- what
11 are the terms of the trust that you saw with
12 your own eyes?

13 A. I'd have to see a draft of the trust to
14 give you all the terms.

15 Q. All right. Did you ever have a
16 conversation with Mr. Spallina in which he -- in
17 which you asked him or he explained why it was
18 he identified himself as the trustee?

19 A. I may have. I don't recall.

20 Q. What did you say to him and what did he
21 say to you?

22 A. I just have a general remembrance of a
23 discussion about us filing the litigation.

24 Q. And what's your general remembrance of

1 how he explained that he identified himself as
2 the trustee?

3 A. I'm not sure that that specifically was
4 talked about.

5 MR. STAMOS: All right. I think that's all I
6 have. Anybody else have anything?

7 MR. SIMON: I do.

8 MR. STAMOS: Guys on the phone?

9 MS. FOGLIETTA: Not me.

10 MR. STAMOS: Okay. Eliot? Eliot, are you
11 there?

12 MR. SIMON: I take that as a no.

13 MR. BERSTEIN: I said I'm okay.

14 MR. STAMOS: Okay. I'm sorry. We didn't
15 hear you. Thank you. All right.

16 MR. SIMON: I do have questions.

17 MR. STAMOS: Yeah, of course.

18 MR. SIMON: I have some questions.

19 Just for the record, this is Adam Simon
20 questioning David Simon.

21 EXAMINATION

22 BY MR. SIMON:

23 Q. David, during the entire deposition,
24 you have not been presented with any marked

1 exhibits by Mr. Stamos; is that correct?

2 A. Yes.

3 Q. You've been asked to testify solely by

4 recollection; is that true?

5 A. Yes.

6 Q. Okay. I just would like to show you

7 some documents that may be relevant to some of

8 your testimony.

9 MR. SIMON: Can we mark this as David Simon

10 Deposition Exhibit No. 1.

11 (Whereupon, D. Simon Deposition

12 Exhibit No. 1 was marked for

13 identification.)

14 BY MR. STAMOS:

15 Q. David, I am showing you what's been

16 marked as David Simon Deposition Exhibit No. 1

17 that's got a Bates stamp BT 000031, and at the

18 top of the page, it says S.B. Lexington, Inc.,

19 Employer.

20 Have you ever seen that document

21 before?

22 A. Yes, I have.

23 Q. And can you describe what that document

24 is?

1 A. Under the VEBA, the individual insured
2 or member fills out a beneficiary designation
3 form. This is Si Bernstein's membership -- Si
4 Bernstein as member, filling out his beneficiary
5 designation.

6 Q. And at the top of the page, can you
7 read that, the very heading?

8 A. S.B. Lexington, Inc., Employer/Employee
9 Death Benefit Plan and Trust, Plan and Trust
10 Beneficiary Designation, Simon L. Bernstein.

11 Q. And then can you read -- actually, can
12 you read the entire form into the record?

13 A. Sure.

14 I hereby designate in accordance with
15 the terms of said plan and trust as it may be
16 amended that the name of the beneficiary should
17 be Simon Bernstein irrevocable insurance trust
18 and is signed then by Simon Bernstein as the
19 person to receive at my death the death benefit
20 stipulated in the S.B. Lexington, Inc. employee
21 death benefit and trust in the adoption form
22 adopted by my employer.

23 It is then signed again by Simon and
24 dated.

1 Q. What is the date?

2 A. 8/26/95.

3 Q. And do you recognize those signatures?

4 A. I do.

5 Q. And what are -- whose signatures are
6 those?

7 A. Simon Bernstein.

8 Q. Okay. I have no further questions on
9 that.

10 I'd like to show you --

11 MR. STAMOS: Can you mark this as David Simon
12 Deposition Exhibit No. 2.

13 (Whereupon, D. Simon Deposition
14 Exhibit No. 2 was marked for
15 identification.)

16 BY MR. SIMON:

17 Q. David, I'm showing you what's been
18 marked David Simon Deposition Exhibit No. 2.
19 It's got a Bates stamp of BT 000104. It's
20 entitled SS-4, Application for Employer
21 Identification Number.

22 Have you ever seen that form before?

23 A. Yes, I have.

24 Q. And can you describe what that is?

1 A. This is an application for a tax ID
2 number on behalf of the irrevocable insurance
3 trust, and I filled it out.

4 Q. And can you tell me what appears on
5 Line 1 under Name of Applicant?

6 A. Simon Bernstein Irrevocable Insurance
7 Trust.

8 Q. And on Line No. 3 as trustee or
9 executor?

10 A. Shirley Bernstein.

11 Q. And in the upper-right corner, can you
12 identify what number that is?

13 A. The tax ID number given to the
14 insurance trust.

15 Q. And that -- can you read that number
16 into the record?

17 A. 65-6178916, signed by Shirley Bernstein
18 as trustee, June 21, 1995.

19 Q. And do you recognize that signature?

20 A. I do.

21 Q. And whose signature is that?

22 A. Shirley Bernstein.

23 MR. SIMON: Can we mark this as David Simon

24 Exhibit 3.

1 (Whereupon, D. Simon Deposition
2 Exhibit No. 3 was marked for
3 identification.)

4 BY MR. SIMON:

5 Q. David, I'm showing you what's been
6 marked as David Simon Deposition Exhibit No. 3.
7 It's Bates stamped BT 000002 through BT 000012,
8 and I'm going to ask you if you recognize this
9 exhibit?

10 A. I do.

11 Q. And can you tell me -- can you describe
12 what's contained on the page stamped BT 000002?

13 A. It is a screenshot of a page from our
14 database.

15 Q. And can you tell us what it says at the
16 top of the page of that screenshot?

17 A. It is Si Trust and the properties of Si
18 Trust, and then it says when it was modified,
19 which was the day it was put in, June 21, 1995,
20 and the date that we accessed it, September 30,
21 2013, and then it has a created date, which was
22 when we modified our database to the new
23 database, which is September 3, 2004, so it was
24 reentered.

1 Q. Can you describe that further about the
2 new database?

3 A. We switched over and had to enter
4 into -- some old records into a new database.

5 Q. And do you recall how this document was
6 found?

7 A. Myself or Cheryl conducted a search and
8 found this print of the screen and then the
9 attached draft of the irrevocable trust
10 agreement.

11 Q. And can you describe what the remainder
12 of the exhibit is?

13 A. It's a draft of the irrevocable life
14 insurance trust that I gave to Si.

15 Q. And this was in June of 1995?

16 A. Yes.

17 Q. Showing you --

18 MR. SIMON: Can you mark this as Exhibit 4,
19 please.

20 (Whereupon, D. Simon Deposition
21 Exhibit No. 4 was marked for
22 identification.)

23 BY MR. SIMON:

24 Q. Showing you what has been marked as

1 David Simon Deposition Exhibit No. 4. It's
2 Bates stamped BT 000013 through 000021.

3 Have you ever seen that document
4 before?

5 A. Yes, I have, and it has my writing on
6 it.

7 Q. So you see some handwriting in the
8 blanks on the first page?

9 A. I do.

10 Q. And what does that say?

11 A. The handwriting says Si, then Shirley,
12 then Si.

13 Q. And it's got Shirley -- Shirley's name
14 and then the words -- what words follow
15 Shirley's name?

16 A. As trustee. This is an earlier draft
17 of the same document.

18 Q. Okay. Now, I'd like to direct your
19 attention to Article 7 of Exhibit 4, and can you
20 read that Article 7 into the record?

21 A. Upon my death, the trustee shall divide
22 the property of this trust into as many separate
23 trusts as there are children of mine who survive
24 me and children of mine who predecease me

1 leaving descendants who survive me. These
2 trusts shall be designated respectively by the
3 name of my children. Each trust shall be
4 administered and distributed in the following
5 manner.

6 And there's an A, B, and C.

7 Q. And then Article 8, let's look at the
8 last paragraph. Right before Article 9, can you
9 read that sentence?

10 A. As of the date of this agreement, I
11 currently have blank children living; namely,
12 colon.

13 Q. And now I'd like you to look back at
14 Exhibit No. 3 and read to me Article 7.

15 A. Upon my death, the trustee shall divide
16 the property of the trust into as many separate
17 trusts as there are children of mine that
18 survive me and children of mine who predecease
19 me, living descendants who survive me. These
20 trusts shall be designated respectively by the
21 names of my children. Each trust shall be
22 administered and distributed in the following
23 manner.

24 And there's an A, B, and C.

1 Q. And directing you to the end of
2 Article 8 of that draft, which is, again,
3 Exhibit 3, can you read the last same sentence?

4 A. Sure.

5 As of the date of this agreement, I
6 currently have five children living; namely, Ted
7 S. Bernstein, Pamela B. Simon, Jill Bernstein,
8 Lisa Bernstein Friedstein, and Eliot Bernstein.

9 MR. SIMON: I have nothing further.

10 MR. STAMOS: Couple follow-ups.

11 FURTHER EXAMINATION

12 BY MR. STAMOS:

13 Q. When you look at Exhibit No. 4,
14 where -- where was this document located?

15 A. My file.

16 Q. And when you say your files, what does
17 that mean? I mean, did you have a file that --

18 A. File, yes, my --

19 Q. Was it lying on a -- laying on a desk?

20 A. Oh, no. In storage --

21 Q. I mean, how was it maintained? I mean,
22 how did you -- how did you locate it?

23 A. Went to storage, got the manila folder
24 out that said File on it, opened the file.

1 Q. And what did that file -- what did that
2 file -- how was that file designated?

3 A. I -- I don't know off the top of my
4 head. I'd have to check.

5 Q. How did you -- were there other
6 materials in it aside from this document, this
7 blank?

8 A. No.

9 Q. So I take it the document that we have
10 marked as Exhibit No. 3 was not in that file,
11 because this -- this, you had to go in the
12 computer to find, correct?

13 A. Correct.

14 Q. And so how did -- where did this --
15 when you look at Exhibit No. 4, where did this
16 originally come from? Was this originally --
17 was this at some point in your word processor
18 and you -- with these lines in it that were to
19 be filled out?

20 A. Yes.

21 Q. Did you locate that? This, meaning
22 Exhibit 4, right, just so we know what we're
23 talking about.

24 A. Did I locate that on the word

1 processor?

2 Q. Yeah, no, I wasn't clear.

3 Looking at Exhibit No. 4, I take it

4 this is at -- this was at one point on your word

5 processor and it was printed out and then filled

6 out and then --

7 A. Not -- not the exhibit, no. It has my

8 handwriting on it, so what I think I did is, is

9 I wrote this in and gave it to my assistant who

10 then made the modifications which you see is

11 Exhibit 3.

12 Q. But my question to you is: Before you

13 wrote in, this was obviously printed out from a

14 printer, correct?

15 A. Correct.

16 Q. This must have been on your word

17 processor to be printed out on a printer,

18 correct? Exhibit 4.

19 A. I believe so.

20 Q. Did you find Exhibit 4 in your -- in

21 your computer?

22 A. Changed to look like Exhibit 3, yes.

23 Q. And then I take it -- hang on for a

24 second.

1 Were any subsequent drafts made on your
2 computer after -- after Exhibit No. 3?

3 A. No.

4 Q. Did you give a copy of Exhibit No. 3 to
5 Simon Bernstein?

6 A. Yes.

7 Q. And what did he do with it?

8 A. I don't know for sure because I wasn't
9 there, but I believe he went to Hopkins & Sutter
10 to have it changed one last time and executed.

11 Q. And did you share your draft with
12 Hopkins & Sutter? What's in your computer, was
13 it ever transmitted to Hopkins & Sutter so they
14 could mark it up?

15 A. It originated at Hopkins & Sutter
16 because it was Hopkins & Sutter that did my
17 irrevocable life insurance trust.

18 Q. No, no, I know that, but -- but you
19 created the document called Si Trust that you've
20 talked about, Exhibit No. 3, correct?

21 A. Actually, it was created at -- most of
22 it by Hopkins & Sutter when they did the work
23 for me.

24 Q. Okay.

1 A. I modified what you're seeing.

2 Q. I understand that. So you modified a
3 document that had been your document from
4 Hopkins & Sutter, right? That's what you're
5 telling us?

6 A. Yes.

7 Q. And then -- and you made modifications,
8 including you being identified as the trustee,
9 correct?

10 A. Yes.

11 Q. On No. 3, Exhibit No. 3?

12 A. Yes.

13 Q. And you gave that to Simon Bernstein,
14 correct?

15 A. Yes.

16 Q. Okay. What I'm asking is: Did you
17 also transmit to Hopkins & Sutter electronically
18 what we have before us as Exhibit No. 3 so that
19 they could make modifications to it pursuant to
20 what Mr. Bernstein wanted?

21 A. I personally did not.

22 Q. Did somebody else do that?

23 A. It's very possible.

24 Q. And who would have done that?

1 A. My assistant.

2 Q. Who?

3 A. Debbie.

4 Q. Is she still with you?

5 A. She's not.

6 Q. Is she still available?

7 A. Don't know.

8 Q. Would she have done that without your

9 instruction?

10 A. She would -- if Si would have told her,

11 she would have, yes.

12 Q. Do you think that happened?

13 A. I don't know.

14 Q. When Mr. Bernstein -- did you -- did

15 you keep a copy of what you gave Mr. Bernstein

16 to take to Hopkins & Sutter?

17 A. No, I did not.

18 Q. Why not?

19 A. No reason.

20 Q. Why'd you keep a draft?

21 A. I didn't realize I did, but obviously

22 at the time, Debbie must have filed it.

23 Q. When he returned to you after his

24 meetings at Hopkins & Sutter, did you keep a

1 copy of that document?

2 A. The executed trust?

3 Q. Yeah.

4 A. I believe we did have it for a period

5 of time till we moved offices.

6 Q. Okay. And I take it you would have

7 stored it in the same file as the draft, right?

8 You wouldn't put it in another place --

9 A. I didn't store it.

10 Q. Who --

11 A. Mr. Bernstein would have stored it,

12 Simon Bernstein.

13 Q. He did? Did you see him put it in the

14 file?

15 A. Did I see him? No. I don't watch --

16 Q. Did you ever see it again after that

17 day?

18 A. We do a thing called the document

19 review board, so depending on the exact date

20 that it was funded, I'd have to go back. I

21 probably would have seen it at that point, too,

22 so on every time there's an A.L.P.S. funding,

23 there's a series of documents.

24 Q. Every time there's a what funding?

1 A. A.L.P.S.

2 Q. Yeah?

3 A. Arbitrage Life Payment System.

4 So at the time of the funding of the
5 policy, there would have been a document review
6 board, and that would have been reviewed again
7 at that time.

8 Q. Why do you care who the beneficiary is?

9 A. He was also the owner.

10 Q. What does that matter at that the
11 point?

12 A. Because in the Arbitrage Life Payment
13 System, there's reps and warranties made by the
14 owner that are essential to the payment plan.

15 Q. Is it your testimony that you saw
16 the -- the trust at a later date in your office?

17 A. I would have to see what date it was
18 funded, but I would say yes, I saw it on the
19 date that it was funded also.

20 Q. Do you remember doing that? Do you
21 remember seeing it?

22 A. I remember seeing it when he came back.
23 I do not have an independent recollection of
24 that, but it was our habit and custom to do that

1 on each and every trust and each and every
2 owner.

3 Q. Okay. And that's something that would
4 have been maintained by your company because you
5 were participating in this A.L.P.S. program,
6 correct?

7 I'm probably not talking about it
8 properly, but -- but the exercise you said you
9 went through --

10 A. Yes.

11 Q. -- was something that -- this review
12 you would have done would have been done as the
13 company. The company would have been required
14 to do that as part of this A.L.P.S. payment?

15 A. S.T.P. would have done it. It's not
16 required to, but it's one of the ways that --

17 Q. All right. And it would have been in
18 your records, the document would have been in
19 your records to facilitate your doing that,
20 correct?

21 A. No.

22 Q. Whose records would it have been in?

23 A. Simon Bernstein's.

24 Q. And all the -- do you have other people

1 who have purchased insurance pursuant to the
2 A.L.P.S. program?

3 A. Yes.

4 Q. Do you do the same review for all of
5 them?

6 A. Yes.

7 Q. Do you have them bring their records in
8 to look at or do you look at the records you
9 maintain for them?

10 A. No, I would look at the records. And
11 if it wasn't other than Simon Bernstein or
12 myself or the employees are there, then we
13 probably would have kept a copy of that
14 individual's trust, but maybe not the whole
15 trust. Usually what happens is we get a trust
16 certification from the attorney, so there's a
17 front two pages, and then a back signature page.
18 That's the standard practice for us.

19 Q. I see. I see.

20 And your testimony is that at some
21 point, he just took that with him and it was no
22 longer available to you?

23 A. 1996 or when we moved offices, he took
24 all of his furniture, books, records.

1 Q. And when did -- when did -- at some
2 point, did he -- did it cease being funded
3 through the A.L.P.S. program?

4 A. The Lincoln Benefit policy?

5 Q. No. The -- the --

6 A. Capitol Bankers policy was never funded
7 through the A.L.P.S. program.

8 Q. Did the Lincoln benefits policy have
9 the '95 trust you've talked about as the
10 beneficiary?

11 A. And owner.

12 Q. Well, you said that earlier.

13 MR. STAMOS: Okay. That's all I got.

14 Thanks.

15 Reserve?

16 MR. SIMON: Yes.

17 (Whereupon, the deposition
18 concluded at 4:25 p.m.)

19

20

21

22

23

24

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 SIMON BERNSTEIN)
IRREVOCABLE INSURANCE)
5 TRUST DTD 6/21/95, by)
Ted S. Bernstein, its)
6 Trustee, Ted S.)
Bernstein, an)
7 individual, Pamela B.)
Simon, an individual,)
8 Jill Iantoni, an)
individual, and Lisa S.)
9 Friedstein, an)
individual,)
10)
Plaintiff,)

11 vs.) No. 13 CV 3643

12 HERITAGE UNION LIFE)
INSURANCE COMPANY,)
13)
Defendant.)

14 This is to certify that I have read the
15 transcript of my deposition taken in the
16 above-entitled cause by Vicki L. D'Antonio,
17 Certified Shorthand Reporter, on January 5, 2015,
18 and that the foregoing transcript accurately
states the questions asked and the answers given
by me as they now appear.

19 _____
20 DAVID SIMON

21 SUBSCRIBED AND SWORN TO
22 before me this _____ day
23 of _____, 2015.

24 _____
Notary Public

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4

5 I, VICKI L. D'ANTONIO, a Notary Public

6 within and for the County of Cook and State of

7 Illinois, do hereby certify that heretofore,

8 to-wit, on the 5th day of January, 2015,

9 personally appeared before me, DAVID SIMON, a

10 witness in a certain cause now pending and

11 undetermined in the United States District

12 Court, Northern District of Illinois, Eastern

13 Division, wherein SIMON BERNSTEIN IRREVOCABLE

14 INSURANCE TRUST DTD 6/21/95 is the Plaintiff and

15 HERITAGE UNION LIFE INSURANCE COMPANY

16 is the Defendant.

17 I further certify that the said DAVID

18 SIMON was by me first duly sworn to testify the

19 truth, the whole truth, and nothing but the

20 truth in the cause aforesaid; that the testimony

21 then given by said witness was reported

22 stenographically by me in the presence of said

23 witness and afterwards reduced to typewriting by

24 Computer-Aided Transcription, and the foregoing

1 is a true and correct transcript of the
2 testimony so given by said witness as aforesaid.

3 I further certify that the signature to
4 the foregoing deposition was reserved by counsel
5 for the respective parties.

6 I further certify that the taking of this
7 deposition was pursuant to notice and that there
8 were present at the deposition the attorneys
9 hereinbefore mentioned.

10 I further certify that I am not counsel
11 for nor in any way related to the parties to
12 this suit, nor am I in any way interested in the
13 outcome thereof.

14 IN TESTIMONY WHEREOF: I have hereunto
15 set my hand and affixed my notarial seal this
16 9th day of January, 2015.

17

18

19

Richard S. D'Antonio



20 NOTARY PUBLIC, COOK COUNTY, ILLINOIS
21 CSR LIC. NO. 84-004344

22

23

24

25

1 McCorkle Litigation Services, Inc.
2 200 N. LaSalle Street, Suite 2900
3 Chicago, Illinois 60601-1014

4 January 9, 2015

5 The Simon Law Firm
6 Mr. Adam M. Simon
7 203 East Wacker Drive, Suite 2725
8 Chicago, Illinois 60601

9 IN RE: Bernstein v. Heritage
10 COURT NUMBER: 13 CV 3643
11 DATE TAKEN: January 5, 2015
12 DEPONENT: Mr. David Simon

13 Dear Mr. Simon:

14 Enclosed is the deposition transcript for the
15 aforementioned deponent in the above-entitled
16 cause. Also enclosed are additional signature
17 pages, if applicable, and errata sheets.

18 Per your agreement to secure signature, please
19 submit the transcript to the deponent for review
20 and signature. All changes or corrections must
21 be made on the errata sheets, not on the transcript
22 itself. All errata sheets should be signed and
23 all signature pages need to be signed and notarized.
24 After the deponent has completed the above,
 please return all signature pages and errata
 sheets to me at the above address, and I will
 handle distribution to the respective parties.

 If you have any questions, please call me at the
 phone number below.

 Sincerely,

 Margaret Setina Court Reporter Present:
 Signature Department Vicki L. D'Antonio
 cc: Mr. James Stamos

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EXHIBIT 8

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)
Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95)
Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)

**Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland**

Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

_____)

PLAINTIFFS' FIRST AMENDED COMPLAINT

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, and TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually, PAMELA B. SIMON, individually, JILL IANTONI, individually, and LISA FRIEDSTEIN, individually, by their attorney, Adam M. Simon, and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, ("HERITAGE") states as follows:

BACKGROUND

1. At all relevant times, the BERNSTEIN TRUST was a common law irrevocable life insurance trust established in Chicago, Illinois, by the settlor, Simon L. Bernstein, ("Simon Bernstein" or "insured") and was formed pursuant to the laws of the state of Illinois.
2. At all relevant times, the BERNSTEIN TRUST was a beneficiary of a life insurance policy insuring the life of Simon Bernstein, and issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy").
3. Simon Bernstein's spouse, Shirley Bernstein, was named as the initial Trustee of the BERNSTEIN TRUST. Shirley Bernstein passed away on December 8, 2010, predeceasing Simon Bernstein.
4. The successor trustee, as set forth in the BERNSTEIN TRUST agreement is Ted Bernstein.
5. The beneficiaries of the BERNSTEIN TRUST as named in the BERNSTEIN TRUST Agreement are the children of Simon Bernstein.

6. Simon Bernstein passed away on September 13, 2012, and is survived by five adult children whose names are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein. By this amendment, Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein are being added as co-Plaintiffs in their individual capacities.

7. Four out five of the adult children of Simon Bernstein, whom hold eighty percent of the beneficial interest of the BERNSTEIN TRUST have consented to having Ted Bernstein, as Trustee of the BERNSTEIN TRUST, prosecute the claims of the BERNSTEIN TRUST as to the Policy proceeds at issue.

8. Eliot Bernstein, the sole non-consenting adult child of Simon Bernstein, holds the remaining twenty percent of the beneficial interest in the BERNSTEIN TRUST, and is representing his own interests and has chosen to pursue his own purported claims, pro se, in this matter.

9. The Policy was originally purchased by the S.B. Lexington, Inc. 501(c)(9) VEBA Trust (the "VEBA") from Capitol Bankers Life Insurance Company ("CBLIC") and was delivered to the original owner in Chicago, Illinois on or about December 27, 1982.

10. At the time of the purchase of the Policy, S.B. Lexington, Inc., was an Illinois corporation owned, in whole or part, and controlled by Simon Bernstein.

11. At the time of purchase of the Policy, S.B. Lexington, Inc. was an insurance brokerage licensed in the state of Illinois, and Simon Bernstein was both a principal and an employee of S.B. Lexington, Inc.

12. At the time of issuance and delivery of the Policy, CBLIC was an insurance company licensed and doing business in the State of Illinois.

13. HERITAGE subsequently assumed the Policy from CBLIC and thus became the successor to CBLIC as “Insurer” under the Policy and remained the insurer including at the time of Simon Bernstein’s death.

14. In 1995, the VEBA, by and through LaSalle National Trust, N.A., as Trustee of the VEBA, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee, as primary beneficiary of the Policy, and the BERNSTEIN TRUST as the contingent beneficiary.

15. On or about August 26, 1995, Simon Bernstein, in his capacity as member or auxiliary member of the VEBA, signed a VEBA Plan and Trust Beneficiary Designation form designating the BERNSTEIN TRUST as the “person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and the Adoption Form adopted by the Employer”.

16. The August 26, 1995 VEBA Plan and Trust Beneficiary Designation form signed by Simon Bernstein evidenced Simon Bernstein’s intent that the beneficiary of the Policy proceeds was to be the BERNSTEIN TRUST.

17. S.B. Lexington, Inc. and the VEBA were voluntarily dissolved on or about April 3, 1998.

18. On or about the time of the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon Bernstein, individually.

19. From the time of Simon Bernstein’s designation of the BERNSTEIN TRUST as the intended beneficiary of the Policy proceeds on August 26, 1995, no document was submitted by Simon Bernstein (or any other Policy owner) to the Insurer which evidenced any change in his intent that the BERNSTEIN TRUST was to receive the Policy proceeds upon his death.

20. At the time of his death, Simon Bernstein was the owner of the Policy, and the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

21. The insured under the Policy, Simon Bernstein, passed away on September 13, 2012, and on that date the Policy remained in force.

22. Following Simon Bernstein's death, the BERNSTEIN TRUST, by and through its counsel in Palm Beach County, FL, submitted a death claim to HERITAGE under the Policy including the insured's death certificate and other documentation.

COUNT I

BREACH OF CONTRACT

23. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶22 as if fully set forth as ¶23 of Count I.

24. The Policy, by its terms, obligates HERITAGE to pay the death benefits to the beneficiary of the Policy upon HERITAGE'S receipt of due proof of the insured's death.

25. HERITAGE breached its obligations under the Policy by refusing and failing to pay the Policy proceeds to the BERNSTEIN TRUST as beneficiary of the Policy despite HERITAGE'S receipt of due proof of the insured's death.

26. Despite the BERNSTEIN TRUST'S repeated demands and its initiation of a breach of contract claim, HERITAGE did not pay out the death benefits on the Policy to the BERNSTEIN TRUST instead it filed an action in interpleader and deposited the Policy proceeds with the Registry of the Court.

27. As a direct result of HERITAGE's refusal and failure to pay the Policy proceeds to the BERNSTEIN TRUST pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds \$1,000,000.00.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for a judgment to be entered in its favor and against Defendant, HERITAGE, for the amount of the Policy proceeds on deposit with the Registry of the Court (an amount in excess of \$1,000,000.00) plus costs and reasonable attorneys' fees together with such further relief as this court may deem just and proper.

COUNT II

DECLARATORY JUDGMENT

28. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶27 above as ¶28 of Count II and pleads in the alternative for a Declaratory Judgment.

29. On or about June 21, 1995, David Simon, an attorney and Simon Bernstein's son-in-law, met with Simon Bernstein before Simon Bernstein went to the law offices of Hopkins and Sutter in Chicago, Illinois to finalize and execute the BERNSTEIN TRUST Agreement.

30. After the meeting at Hopkins and Sutter, David B. Simon reviewed the final version of the BERNSTEIN TRUST Agreement and personally saw the final version of the BERNSTEIN TRUST Agreement containing Simon Bernstein's signature.

31. The final version of the BERNSTEIN TRUST Agreement named the children of Simon Bernstein as beneficiaries of the BERNSTEIN TRUST, and unsigned drafts of the BERNSTEIN TRUST Agreement confirm the same.

32. The final version of the BERNSTEIN TRUST Agreement named Shirley Bernstein, as Trustee, and named Ted Bernstein as, successor Trustee.

33. As set forth above, at the time of death of Simon Bernstein, the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

34. Following the death of Simon Bernstein, neither an executed original of the BERNSTEIN TRUST Agreement nor an executed copy could be located by Simon Bernstein's family members.

35. Neither an executed original nor an executed copy of the BERNSTEIN TRUST Agreement has been located after diligent searches conducted as follows:

i) Ted Bernstein and other Bernstein family members of Simon Bernstein's home and business office;

ii) the law offices of Tescher and Spallina, Simon Bernstein's counsel in Palm Beach County, Florida,

iii) the offices of Foley and Lardner (successor to Hopkins and Sutter) in Chicago, IL; and

iv) the offices of The Simon Law Firm.

36. As set forth above, Plaintiffs have provided HERITAGE with due proof of the death of Simon Bernstein which occurred on September 13, 2012.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for an Order entering a declaratory judgment as follows:

- a) declaring that the original BERNSTEIN TRUST was lost and after a diligent search cannot be located;
- b) declaring that the BERNSTEIN TRUST Agreement was executed and established by Simon Bernstein on or about June 21, 1995;
- c) declaring that the beneficiaries of the BERNSTEIN TRUST are the five children of Simon Bernstein;

- d) declaring that Ted Bernstein, is authorized to act as Trustee of the BERNSTEIN TRUST because the initial trustee, Shirley Bernstein, predeceased Simon Bernstein;
- e) declaring that the BERNSTEIN TRUST is the sole surviving beneficiary of the Policy;
- f) declaring that the BERNSTEIN TRUST is entitled to the proceeds placed on deposit by HERITAGE with the Registry of the Court;
- g) ordering the Registry of the Court to release all of the proceeds on deposit to the BERNSTEIN TRUST; and
- h) for such other relief as this court may deem just and proper.

COUNT III

RESULTING TRUST

37. Plaintiffs restate and reallege the allegations contained in ¶1-¶36 of Count II as ¶37 of Count III and plead, in the alternative, for imposition of a Resulting Trust.

38. Pleading in the alternative, the executed original of the BERNSTEIN TRUST Agreement has been lost and after a diligent search as detailed above by the executors, trustee and attorneys of Simon Bernstein's estate and by Ted Bernstein, and others, its whereabouts remain unknown.

39. Plaintiffs have presented HERITAGE with due proof of Simon Bernstein's death, and Plaintiff has provided unexecuted drafts of the BERNSTEIN TRUST Agreement to HERITAGE.

40. Plaintiffs have also provided HERITAGE with other evidence of the BERNSTEIN TRUST'S existence including a document signed by Simon Bernstein that designated the BERNSTEIN TRUST as the ultimate beneficiary of the Policy proceeds upon his death.

41. At all relevant times and beginning on or about June 21, 1995, Simon Bernstein expressed his intent that (i) the BERNSTEIN TRUST was to be the ultimate beneficiary of the life insurance proceeds; and (ii) the beneficiaries of the BERNSTEIN TRUST were to be the children of Simon Bernstein.

42. Upon the death of Simon Bernstein, the right to the Policy proceeds immediately vested in the beneficiary of the Policy.

43. At the time of Simon Bernstein's death, the beneficiary of the Policy was the BERNSTEIN TRUST.

44. If an express trust cannot be established, then this court must enforce Simon Bernstein's intent that the BERNSTEIN TRUST be the beneficiary of the Policy; and therefore upon the death of Simon Bernstein the rights to the Policy proceeds immediately vested in a resulting trust in favor of the five children of Simon Bernstein.

45. Upon information and belief, Bank of America, N.A., as successor Trustee of the VEBA to LaSalle National Trust, N.A., has disclaimed any interest in the Policy.

46. In any case, the VEBA terminated in 1998 simultaneously with the dissolution of S.B. Lexington, Inc.

47. The primary beneficiary of the Policy named at the time of Simon Bernstein's death was LaSalle National Trust, N.A. as "Trustee" of the VEBA.

48. LaSalle National Trust, N.A., was the last acting Trustee of the VEBA and was named beneficiary of the Policy in its capacity as Trustee of the VEBA.

49. As set forth above, the VEBA no longer exists, and the ex-Trustee of the dissolved trust, and upon information and belief, Bank Of America, N.A., as successor to LaSalle National Trust, N.A. has disclaimed any interest in the Policy.

50. As set forth herein, Plaintiff has established that it is immediately entitled to the life insurance proceeds HERITAGE deposited with the Registry of the Court.

51. Alternatively, by virtue of the facts alleged herein, HERITAGE held the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein and since HERITAGE deposited the Policy proceeds the Registry, the Registry now holds the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein.

WHEREFORE, PLAINTIFFS pray for an Order as follows:

- a) finding that the Registry of the Court holds the Policy Proceeds in a Resulting Trust for the benefit of the five children of Simon Bernstein, Ted Bernstein, Pamela Simon, Eliot Ivan Bernstein, Jill Iantoni and Lisa Friedstein; and
- b) ordering the Registry of the Court to release all the proceeds on deposit to the Bernstein Trust or alternatively as follows: 1) twenty percent to Ted Bernstein; 2) twenty percent to Pam Simon; 3) twenty percent to Eliot Ivan Bernstein; 4) twenty percent to Jill Iantoni; 5) twenty percent to Lisa Friedstein
- c) and for such other relief as this court may deem just and proper.

By: s/Adam M. Simon

Adam M. Simon (#6205304)

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Phone: 313-819-0730

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E-Mail: asimon@chicagolaw.com

Attorneys for Plaintiffs and Third-Party

Defendants

*Simon L. Bernstein Irrevocable Insurance Trust
Dtd 6/21/95; Ted Bernstein as Trustee, and
individually, Pamela Simon, Lisa Friedstein
and Jill Iantoni*

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT COURT ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

Case No. 13-cv-03643

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

Defendant.)
-----)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Counter-Plaintiff,)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Counter-Defendant,)

and,)

FIRST ARLINGTON NATIONAL)
BANK, as Trustee of S.B. Lexington,)
Inc. Employee Death Benefit Trust,)
UNITED BANK OF ILLINOIS, BANK)
OF AMERICA, successor in interest to)
LaSalle National Trust, N.A.,)
SIMON BERNSTEIN TRUST, N. A.,)
TED BERNSTEIN, individually and)
as alleged Trustee of the Simon)
Bernstein Irrevocable Insurance Trust)
Dtd. 6/21/95, and ELIOT BERNSTEIN,)

Third-Party Defendants.)
-----)



ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff,)

v.)

**TED BERNSTEIN individually and)
as alleged Trustee of the Simon)
Berustein Irrevocable Insurance Trust)
Dtd. 6/21/95)**

Cross-Defendant)

and)

**PAMELA B. SIMON, DAVID B. SIMON)
both Professionally and Personally,)
ADAM SIMON both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER both Professionally)
and Personally, ROBERT SPALLINA)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI,)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC.,)
S.B. LEXINGTON, INC., NATIONAL)
SERVICE ASSOCIATION, INC.)
(OF FLORIDA) NATIONAL)
SERVICE ASSOCIATION, INC.)
(OF ILLINOIS) AND)
JOHN AND JANE DOE'S)**

Third Party Defendants.

ELIOT IVAN BERNSTEIN ("ELIOT") (1) ANSWER TO JACKSON NATIONAL LIFE INSURANCE COMPANY ("JACKSON") ANSWER AND COUNTER-CLAIM AND THIRD-PARTY COMPLAINT FOR INTERPLEADER AND (2) CROSS CLAIM

ELIOT a third party defendant and an alleged beneficiary of a life insurance policy Number 1009208 on the life of Simon L. Bernstein ("Policy(ies)"), a "Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95" and a "Simon Bernstein Trust, N.A." that are at dispute in the Lawsuit, makes the following (1) Response to Jackson's Answer and Counterclaim and (2) Cross claim.

I, Eliot Ivan Bernstein, make the following statements and allegations to the best of my knowledge and on information and belief and as a Pro Se Litigant¹:

ANSWER TO JACKSON'S COUNTER-CLAIM AND THIRD PARTY COMPLAINT
FOR INTERPLEADER

1. Jackson National Life Insurance Company ("Jackson") brings this counter-claim and third-party complaint for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14, as it seeks a declaration of rights under a life insurance policy for which it is responsible to administer. The proceeds from the policy (the "Death Benefit Proceeds") have been tendered to this Court.

¹ Pleadings in this case are being filed by Plaintiff In Propria Persona, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11th Cir1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995). also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991).
In Puckett v. Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957)"The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."
According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice.

Approved by Cross Claim

ELIOT ANSWER: To the extent Par. 1 of Jackson's counter-claim/third-party complaint contain conclusions of law, no response is required. However, ELIOT denies that Jackson has tendered the death benefit to the court, as when ELIOT contacted Jackson's counsel Alexander David Marks ("MARKS") he stated at that time, after Jackson's Answer was filed, that the death benefit had not been paid to this Court.

2. Jackson, successor in interest to Reassure America Life Insurance Company ("Reassure"), successor in interest to Heritage Union Life Insurance Company ("Heritage"), is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business located in Lansing, Michigan. Jackson did not originate or administer the subject life insurance policy, Policy Number 1009208 (the "Policy"), but inherited the Policy and the Policy records from its predecessors.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

3. The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 (the "Bernstein Trust") is alleged in the underlying suit to be a "common law trust established in Chicago, Illinois by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the state of Illinois."

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

4. Ted S. Bernstein is a resident and citizen of Florida. He is alleged in the underlying suit to be the "trustee" of the Bernstein Trust. Ted Bernstein is further, individually, upon information and belief, a beneficiary of the Bernstein Trust (as Simon Bernstein's son).

ELIOT ANSWER: ELIOT admits that Ted S. Bernstein ("TED") is a resident of Florida.

ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the

remainder of the allegations of this paragraph and therefore denies the same. That ELIOT claims that TED makes his claims in this Lawsuit acting as alleged "trustee" of the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" but also TED alleges this trust and any executed copies cannot be located. Therefore, it would be almost impossible for TED to make assertions to who the true and proper trustees and beneficiaries of such lost trust are. ELIOT claims that the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" was not the final beneficiary of the Policy(ies). On information and belief the beneficiary of the Policy(ies) at the time of Simon L. Bernstein ("SIMON") death, as according to Jackson's Counter Claim the beneficiary at the time of death was the "Simon Bernstein Trust, N.A." and thus the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" may have no valid claim as a prior beneficiary.

5. Eliot Bernstein is a resident and citizen of Florida. He has asserted that he and/or his children are potential beneficiaries under the Policy(ies) as Simon Bernstein's son, presumably under the Bernstein Trust.

ELIOT ANSWER: ELIOT admits residency and citizenry of Florida and that he has asserted that he and/or his children are potential beneficiaries as SIMON's son and grandchildren. ELIOT denies his claims were made under the Bernstein Trust, which according to TED's response to Jackson's Counter Claim, "Ted Bernstein and the Bernstein Trust admit that to its knowledge no one has been able to locate an executed original or an executed copy of the Bernstein Trust, but denies that no one has located a copy of the Bernstein Trust." In other words the executed "Bernstein Trust" is lost and no one has a copy and herein the term "lost" trust will refer to the "Bernstein Trust" and any other names it is referenced as.



6. First Arlington National Bank is, upon information and belief, a bank in Illinois that was, at one point, and the alleged trustee for the "S.B. Lexington, Inc. Employee Death Benefit Trust" (the "Lexington Trust"). The Lexington Trust was, upon information and belief, created to provide employee benefits to certain employees of S.B. Lexington, Inc., an insurance agency, including Simon Bernstein, but it is unclear if such trust was properly established.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

7. United Bank of Illinois is, upon information and belief, a bank in Illinois that was, at one point, a named beneficiary of the Policy. To date, Jackson has not determined the current existence of this bank.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

8. Bank of America, N.A., is a national banking association with its principal place of business in Charlotte, North Carolina. Bank of America, N.A. is the successor in interest to LaSalle National Trust, N.A., which was a named beneficiary of the Policy.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

9. The "Simon Bernstein Trust" is, upon information and belief, the Bernstein Trust listed in paragraph 3, above, and was a named contingent beneficiary of the Policy. However, based on the variance in title, to the extent it is a separate trust from the Bernstein Trust referenced above, it is named separately.



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ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

10. Subject matter jurisdiction is proper in accordance with 28 U.S.C. § 1335(a).

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

11. Personal jurisdiction is proper over Ted Bernstein because he, allegedly as Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.

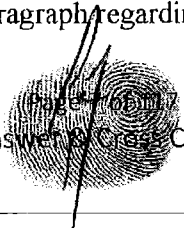
ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT claims that TED cannot assert with any proof or contract or trust that he is the trustee of the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" aka "Bernstein Trust" as TED claims the trust is lost and no executed copies exist.

12. Personal jurisdiction is proper over First Arlington National Bank, United Bank of Illinois, and Bank of America in accordance with 735 ILCS 5/2-209(a)(1) because each, upon information and belief, transacts business in Illinois.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

13. Personal jurisdiction is proper over Ted and Eliot Bernstein in accordance with 735 ILCS 5/2-209(a)(13) as each are believed to have an ownership interest in the Bernstein Trust, which is alleged in the underlying complaint to exist underneath laws of and to be administered within this State.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph regarding personal jurisdiction and therefore

A handwritten signature in black ink is written over a circular stamp. The stamp contains the text "Case 1:13-cv-03643" and "Page 8 of 73". The signature is written in a cursive style and extends across the stamp and slightly above and below it.

denies the same. ELIOT denies that TED or ELIOT can assert an ownership or beneficial interest in the lost "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" aka "Bernstein Trust," as if the trust is lost they cannot prove through contract anyone's interests or rights.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to this interpleader action occurred in this District.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

15. On December 27, 1982, upon information and belief, Capitol Bankers Life Insurance Company issued the Policy, with Simon L. Bernstein as the alleged insured (the "Insured").

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The Court should note that after repeated attempts by ELIOT to secure copies of the underlying policies and trusts pertinent to this Lawsuit from the parties, he has been denied and refused all such suppressed and denied information and documents to form any opinion on the validity of the claims.

16. Over the years, the Policy's owner(s), beneficiary(ies), contingent beneficiary(ies) and issuer changed. Among the parties listed as Policy beneficiaries (either primary or contingent) include: "Simon Bernstein"; "First Arlington National Bank, as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust"; "United Bank of Illinois"; "LaSalle National Trust, N.A., Trustee"; "LaSalle National Trust, N.A."; "Simon Bernstein Insurance Trust dated 6/21/1995, Trust"; and "Simon Bernstein Trust, N.A."

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The Court should

note that after repeated attempts by ELIOT to secure copies of the underlying policies and trusts pertinent to this Lawsuit from the parties, he has been denied and refused all such suppressed and denied requested information and documents to form any opinion on the validity of the claims.

17. At the time of the Insured's death, it appears "LaSalle National Trust, N.A." was the named primary beneficiary of the Policy, and the "Simon Bernstein Trust, N.A." was the contingent beneficiary of the Policy. The Policy's Death Benefit Proceeds are \$1,689,070.00, less an outstanding loan.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations regarding the beneficiaries of the Policy(ies) and therefore denies the same. ELIOT denies that the Policy(ies) Death Benefit Proceeds are \$1,689,070.00, as it was initially represented by TED, Robert Spallina, Esq. ("SPALLINA") and others that the death benefit was \$2,000,000.00 less outstanding loans. When ELIOT asked TED and SPALLINA and others for copies of the policies loans or any other Policy(ies) information it was denied and suppressed. After repeated attempts by ELIOT to secure copies of the underlying policies, trusts and carrier information pertinent to this Lawsuit from the parties, he has been denied and refused all such requested information and documents to form any opinion on the validity of the claims.

18. Subsequent to the Insured's death, Ted Bernstein, through his Florida counsel (**who later claimed Bernstein did not have authority to file the instant suit in Illinois on behalf of the Bernstein Trust and withdrew representation**), [emphasis added] submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, allegedly as the trustee of the Bernstein Trust. Ted Bernstein claimed that the Lexington Trust was voluntarily dissolved in

1998, leaving the Bernstein Trust as the alleged sole surviving Policy beneficiary at the time of the Decedent's death.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT claims, on information and belief that TED's counsel that withdrew from representation after advising TED that he **did not have "authority" to file this Lawsuit** is believed to be Robert Spallina, Esq. ("SPALLINA") and Donald Tescher, Esq. ("TESCHER") of Tescher & Spallina, P.A. ("TSPA"), who are acting as estate counsel for SIMON's estate and as alleged Personal Representatives for the estate of SIMON.

That ELIOT does not have the necessary files from this Court's records to determine whom the original counsel who drafted and filed this Lawsuit were and if withdrawal of counsel papers were filed after the filing of the suit or withdrawal was prior to filing. That ELIOT believes that any claims of any fiduciary capacities claimed by TED on behalf of any party that is a litigant in this Lawsuit are allegedly fraudulently acquired and are part of a larger **insurance fraud and fraud on the beneficiaries of the estate**. The alleged criminal acts are more fully defined in the Petitions and Motions listed below with URL hyperlinks to the filings, whereby the documents contained at the hyperlinks are hereby incorporated in entirety by reference herein with all exhibits therein, and where the Petitions and Motions were filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida / Probate ("Probate Court") case # 502012CP004391XXXXSB for the estate of Simon L. Bernstein, as follows:

- i. May 6, 2013 ELIOT filed Docket #23 an "EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL

REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE" ("Petition 1").

- a. www.iviewit.tv/20130506PetitionFreezeEstates.pdf 15th Judicial Florida Probate Court and
- b. www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf US District Court Pages 156-582
- ii. May 29, 2013, ELIOT filed Docket #28 "RENEWED EMERGENCY PETITION" ("Petition 2")
 - a. www.iviewit.tv/20130529RenewedEmergencyPetitionSIMON.pdf
- iii. June 26, 2013, ELIOT filed Docket #31 "MOTION TO: CONSIDER IN ORDINARY COURSE THE EMERGENCY PETITION TO FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE FILED BY PETITIONER" ("Petition 3")
 - a. www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseSIMON.pdf
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a. www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf

- vii. September 04, 2013, ELIOT filed Docket #TBD "NOTICE OF EMERGENCY MOTION TO FREEZE ESTATES OF SIMON BERNSTEIN DUE TO ADMITTED AND ACKNOWLEDGED NOTARY PUBLIC FORGERY, FRAUD AND MORE BY THE LAW FIRM OF TESCHER & SPALLINA, P.A., ROBERT SPALLINA AND DONALD TESCHER ACTING AS ALLEGED PERSONAL REPRESENTATIVES AND THEIR LEGAL ASSISTANT AND NOTARY PUBLIC, KIMBERLY MORAN: MOTION FOR INTERIM DISTRIBUTION DUE TO EXTORTION BY ALLEGED PERSONAL REPRESENTATIVES AND OTHERS; MOTION TO STRIKE THE MOTION OF SPALLINA TO REOPEN THE ESTATE OF SHIRLEY; CONTINUED MOTION FOR REMOVAL OF ALLEGED PERSONAL REPRESENTATIVES AND ALLEGED SUCCESSOR TRUSTEE. ("Petition 7")

a. www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf

19. However, Ted Bernstein could not locate (nor could anyone else) a copy of the Bernstein Trust. Accordingly, on January 8, 2013, Reassure, successor to Heritage, responded to Ted Bernstein's counsel stating:

In as much as the above policy provides a large death benefit in excess of \$1.6 million dollars and the fact that the trust document cannot be located, **we respectfully request a court order to enable us to process this claim.** [Emphasis Added]

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT claims that the counsel referred to here as "Ted Bernstein's counsel" is believed to be SPALLINA and TESCHER and the law firm of TSPA, as the Heritage Union Life Insurance Company's letter referenced in Jackson's response demands a "court order" to approve of the TSPA,

SPALLINA, TESCHER, TED and Pamela Beth Simon ("P. SIMON") insurance trust and beneficiary scheme they presented in their death benefit claim. Other correspondences were sent to TSPA, SPALLINA and TESCHER directly by the carrier(s) in their capacity as counsel representing the estate of SIMON and as alleged Personal Representatives of the estate of SIMON.

However, instead of complying with the carriers request to obtain a "court order" to determine the beneficiaries, the instant Lawsuit was instead filed to try and reap the benefits through this Breach of Contract suit and without first obtaining a court order approving the beneficiaries as demanded by the carrier. The initial insurance and trust scheme prepared by TSPA is fully described, defined and exhibited in Petition 1, Section VII - "Insurance Distribution Scheme" Pages 30-37 and Pages 170-175, exhibit 7 - "Settlement Agreement and Mutual Release" ("SAMR"). The trust that would have been created under the SAMR to replace the lost "Bernstein Trust" aka "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" is termed herein as the SAMR TRUST ("SAMR TRUST"). The SAMR TRUST was to act as the proposed trust instrument by which the alleged conversion of proceeds was to be used funneled to allegedly intentionally post mortem elected wrong beneficiaries, as defined more fully in Petition 1, Pages 142-168 and 258-259, exhibits 5, 6 and 25.

That TSPA, SPALLINA and TESCHER are SIMON's estate counsel and alleged Personal Representatives of SIMON's estate, and yet, also appear in this Lawsuit to have acted in apparent conflict with the estate beneficiaries, acting as TED's counsel in this Lawsuit.

ELIOT claims these conflicts enable part of an alleged larger fraud against the estates of SIMON and SHIRLEY as further evidenced and exhibited in the Petitions 1-7 and Petition 1,

Section XIX. CONFLICTS OF INTEREST BY PERSONAL REPRESENTATIVES,
ESTATE COUNSEL AND TRUSTEES DISCOVERED, Pages 88-90.

The documents giving TSPA, SPALLINA, TESCHER and TED fiduciary powers in the estates of SIMON and SHIRLEY are also currently under investigations and questioned as to their validity in complaints filed by ELIOT with the Governor of Florida Notary Public Division, the Palm Beach County Sheriff's Office, Fifteenth Judicial Circuit in and for Palm Beach County, Florida / Probate and have been simultaneously been tendered to the US District Court of New York Southern District.

In the Notary Public investigation at the Florida Governor's Office, the Licensed Notary Public, who is an employee of TSPA, **ADMITTED TO ILLEGALLY NOTARIZING** documents and it is alleged that she forged documents after he was deceased and also improperly Notarized documents, including a Will and Amended Trust of SIMON and documents that allegedly grant Simon's estate counsel, TSPA, SPALLINA and TESCHER their fiduciary capacities as alleged Personal Representatives of the estates of SIMON.

That the Licensed Notary Public Kimberly MORAN ("MORAN"), admitted to committing six instances of Fraud by falsely Notarizing documents and allegedly Forged documents in the estate of SHIRLEY. The alleged forgeries included a document **ILLEGALLY NOTARIZED** in SIMON's name and with a fraudulent signature affixed, done two months after SIMON's passing and submitted to the Probate Court and others as part of official records in the estates. These acts are illegal felony crimes. The Notary Public MORAN's Response to the complaints filed against her with the Governor of Florida's office in an ongoing investigation, including her Admission to the allegations, the Response filed by

ELIOT to MORAN's Response and the original Notary Public original complaint, all can be found as exhibits in Petition 7, exhibits 1,2 &3.

20. Presently, the Bernstein Trust still has not been located. **Accordingly, Jackson is not aware whether the Bernstein Trust even exists**, [EMPHASIS ADDED] and if it does whether its title is the "Simon Bernstein Insurance Trust dated 6/21/1995, Trust," as captioned herein, or the "Simon Bernstein Trust, N.A." as listed as the Policy's contingent beneficiary (or otherwise), **and/or if Ted Bernstein is in fact its trustee**. [Emphasis Added] In conjunction, Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT admits that the "Bernstein Trust" is unknown if it exists. ELIOT admits that TED is questionably the trustee of the "Bernstein Trust" and believes TED has no basis or authority to file this Lawsuit or a death benefit claim with the carrier.

21. In addition, it is not known whether "LaSalle National Trust, N.A." was intended to be named as the primary beneficiary in the role of a trustee (of the Lexington and/or Bernstein Trust), or otherwise. Jackson also has no evidence of the exact status of the Lexington Trust, which was allegedly dissolved."

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

22. Further, Jackson has received correspondence from Eliot Bernstein, attached as Exhibit 1, asserting that he and/or his children are potential beneficiaries under the Policy, (presumably under the Bernstein Trust, but nonetheless raising further questions as to the proper

beneficiaries of the Policy), and requesting that no distributions of the Death Benefit proceeds be made.

ELIOT ANSWER: ELIOT admits in part and denies in part and lacks sufficient information and knowledge in part to form a belief as to the truth of the remainder of the allegations of this paragraph and therefore denies the same. ELIOT admits that he and/or his children are the beneficiaries. ELIOT denies sending correspondence to Jackson but instead sending such correspondence to Reassure America Life Insurance Company (“RALIC”) after failing to reach Heritage after several attempts. RALIC may have tendered the correspondence to Jackson without ELIOT authorization or knowledge. ELIOT admits stating that **NO DISTRIBUTION OF DEATH BENEFITS BE MADE** and further until both **CIVIL AND CRIMINAL REMEDIES ARE NOW RESOLVED**, regarding the Policy(ies).

23. This is an action of interpleader brought under Title 28 of the United States Code, Section 1335.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT makes no answer to the allegations in Par. 23 as they are conclusions of law.

24. Jackson does not dispute the existence of the Policy or its obligation to pay the contractually required payment Death Benefit Proceeds under the Policy, which it has tendered into the registry of this Court.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT claims that Jackson has not tendered the Policy(ies) Proceeds to the registry of this Court after

conversations with Jackson's Attorney at Law, MARKS, who denied benefits have been paid into the registry of this Court at that time.

25. Due to: (a) the inability of any party to locate the Bernstein Trust and uncertainty associated thereunder; (b) the uncertainty surrounding the existence and status of "LaSalle National Trust, N.A." (the primary beneficiary under the Policy) and the Lexington Trust; and (c) the potential conflicting claims under the Policy, Jackson is presently unable to discharge its admitted liability under the Policy.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT admits that "Jackson is presently unable to discharge its admitted liability under the Policy(ies)."

26. Jackson is indifferent among the defendant parties, and has no interest in the benefits payable under the Policy as asserted in this interpleader other than to pay its admitted liability pursuant to the terms of the Policy(ies), which Jackson has been unable to do by reason of uncertainty and potential competing claims. ELIOT claims the death benefit amount is unknown with conflicting claims as to the amount due to the to be determined beneficiaries and therefore cannot determine how much the admitted liability is. Until ELIOT receives all Policy(ies) records and information ELIOT denies that Jackson has no interest in the benefits payable under the Policy(ies) and thus should not be released from this Lawsuit at this time. There may also be other liabilities that are unknown at this time regarding record keeping of beneficiaries and more and these liabilities may be due to any of the parties of this Lawsuit and is yet still unknown, leaving further reason for this Court to leave Jackson a party to the Lawsuit.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

27. Justice and equity dictate that Jackson should not be subject to disputes between the defendant parties and competing claims when it has received a non-substantiated claim for entitlement to the Death Benefit Proceeds by a trust that has yet to be located, nor a copy of which produced.

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

ELIOT shall not be liable to Jackson for any fees or any type of damages.

RELIEF

WHEREFORE, ELIOT prays that:

- i. Even if this court comes to the conclusion that Jackson should be paid attorney fees, then these fees should be paid by TSPA, TESCHER, SPALLINA, TED, Simon Law Firm ("SLF"), David Simon ("D. SIMON"), Pamela Beth Simon ("P. SIMON") and Adam Simon ("A. SIMON") directly, as all these costs have resulted from the allegedly fraudulent and illegal acts of TSPA, SPALLINA, TESCHER, TED, P. SIMON, SLF D. SIMON and A. SIMON, in attempting to convert the Policy(ies) proceeds through an alleged Fraud on this Court and fraud on the true and proper beneficiaries of the Policy(ies).
- ii. ELIOT and his children be paid their legal share of the Policy(ies) proceeds as beneficiaries after a "court order" determining the beneficiaries is made.
- iii. under no circumstances should ELIOT or other beneficiaries or interested parties be made liable for attorney fees or any other damages to Jackson or any other party.

- iv. bonding be required if this Court finds that Abuse of Process has occurred in the filing of this Lawsuit.
- v. Jackson should not pay the Policy(ies) proceeds to this Court registry at this time until all beneficiary disputes are wholly resolved by a court of law.
- vi. this Court should not release Jackson from the remainder of the proceedings, as their interest in Heritage makes them a party to this suit and any damages, which may result from their actions or those of Heritage's are still unknown, and so it would be prudent to leave them in at the present time.
- vii. this Court demand all parties release all insurance policy(ies) records, trust documents and any other information regarding the Policy(ies) or any other insurance or other contracts held to ELIOT immediately so that he may better prepare pleadings for this Lawsuit as he has been denied all such records and information to this point, and,
- viii. leave to amend this Answer.

CROSS CLAIM / COUNTER CLAIM

INTRODUCTION

1. ELIOT brings this cross claim under FRC Rule 13(g) against the Cross Defendant Ted Stuart Bernstein ("TED") and requests this court under FRC Rule 19 to add Pamela B. Simon ("P. SIMON"), David B. Simon ("D. SIMON"), Adam Simon ("A. SIMON"), The Simon Law Firm ("SLF"), Tescher & Spallina P.A. ("TSPA"), Donald Tescher ("TESCHER"), Robert Spallina ("SPALLINA"), Jill Iantoni ("IANTONI"), Lisa Friedstein ("FRIEDSTEIN"), S.T.P. Enterprises ("STP"), S.B. Lexington, Inc. Employee Death Benefit Trust ("SBI"), SB

Lexington, Inc. ("SBL"), National Service Association, Inc. (of Florida) ("NSA"), National Service Association, Inc. (of Illinois) ("NSA2") and John and Jane Doe's to this case as additional Third Party Defendants and further requests this Court to:

- i. To seize all records and demand that all records of all parties concerning either Shirley Bernstein ("SHIRLEY") or Simon Bernstein ("SIMON") held by all parties be turned over to ELIOT, as NO documents have been tendered to him regarding these Policies;
- ii. Award Court Costs not from the Policy(ies) but from alleged conspirators and force bonding for these unnecessary legal and other costs by those parties that have caused this baseless Lawsuit in efforts to perpetrate a fraud;
- iii. ELIOT has requested the Probate Court to remove TSPA, SPALLINA, TESCHER, TED and P. SIMON of any fiduciary capacities regarding the estates of SIMON and SHIRLEY on multiple legal grounds stated in said Petitions and Motion 1-7 and hereby requests this Court remove them as well from acting in any conflicting capacities or self-representations based on the Prima Facie evidence of Forgery, Fraud, Fraud on the Probate Court and Mail and Wire Fraud, already evidenced in Petition 7. **That in hearings held on SHIRLEY's estate on Friday, September 13, 2013 in the Probate Court, Honorable Judge Martin H. Colin told TED, SPALLINA, TESCHER and their counsel, Mark Manceri, that he [Hon. Judge Colin] should read them all their Miranda Rights right at that moment, after hearing how SIMON had notarized documents to close SHIRLEY's estate two months after he was deceased and how there was a fraud upon his court and**

himself personally as he closed the estate with the fraudulent documents and TSPA, TESCHER and SPALLINA did not think it important to note the Court of what they were doing. Hon. Colin's issued this stark Miranda Warning after hearing of the admitted criminal misconduct before his Court, twice in fact.

- iv. That the alleged insurance fraud taking place through the instant Lawsuit in this Court as further defined herein is allegedly being committed by similar parties of the alleged estate frauds, again misusing their fiduciary and professional powers and they should be removed from further representing any parties, sanctioned and all Cross Defendants and Third Party Defendants forced to retain non conflicted counsel further in these proceedings.
- v. ELIOT requests this Court take Judicial Notice of the alleged and admitted crimes herein and in Petitions 1-7 and Hon. Colin's warning and act on its own motions to prevent any further possible criminal activities and damages to others being incurred until these alleged criminal matters are fully resolved.
- vi. Allow ELIOT to ECF in this case due to health problems and expenses. In US District Court Scheindlin has ordered ELIOT access to ECF filing.
- vii. Allow leave to amend this Cross Claim as it was served while ELIOT was recovering from a traumatic brain injury with bleeding on the brain, a fractured rib and bruised collar bone and in ICU for 3 days in Del Ray Beach, FL hospital and the recovery was almost two months during the time for response and therefore ELIOT would like an opportunity to perfect it. The Court granted several extensions during this time period and ELIOT thanks Your Honor for the additional extensions in light of these medical maladies.

- viii. Award damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

JURISDICTION

2. Personal jurisdiction is proper over Ted S. Bernstein because he, allegedly claims to be Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.
3. Personal jurisdiction is proper over Pamela B. Simon, David. B. Simon, Adam Simon, Lisa S. Friedstein and Jill M. Iantoni to this case under 735 ILCS 5/2-209(a)(1 3), as each are believed to have a beneficial interest in the Bernstein Trust, which is alleged in the underlying complaint to exist underneath laws of and to be administered within this State. Tescher & Spallina, P.A., Donald Tescher and Robert Spallina, as each are Personal Representatives, Trustees and estate counsel of the estate of SIMON.
4. Personal jurisdiction is proper over The Simon Law Firm, , S.T.P. Enterprises, S.B. Lexington, Inc. Employee Death Benefit Trust, SB Lexington, Inc., National Service Association, Inc. , of Florida, National Service Association, Inc. Illinois, and John and Jane Doe's to this case under 735 ILCS 5/2-209(a)(1 3), as each are believed to have business in this State.

PARTIES AND VENUES

5. Eliot Ivan Bernstein ("ELIOT") is a resident and citizen of Florida. ELIOT and/or his children are beneficiaries of the Policy(ies).
6. Theodore Stuart Bernstein is a resident and citizen of Florida. He is claiming to be Successor Trustee of the lost "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" aka

“Bernstein Trust” and alleging he is a beneficiary of the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” regarding Heritage Policy #1009208 (“Policy(ies)”). He is the son of SIMON and SHIRLEY.

3. David B. Simon, Esq. is a resident and citizen of Illinois and an Attorney at Law. He is a partner in The Simon Law Firm and married to P. SIMON , daughter of SIMON and SHIRLEY.
4. Adam Simon, Esq. is a resident and citizen of Illinois and an Attorney at Law. He is a partner in the SLF law firm and is brother to D. SIMON.
5. The Simon Law Firm is believed to be a law firm licensed in Illinois.
6. Pamela Beth Simon is a resident of Illinois and citizen of Illinois. She is daughter to SIMON and SHIRLEY and married to D. SIMON and sister-in-law to A. SIMON.
7. Tescher & Spallina, P. A. is believed to be a Florida law firm.
8. Robert L. Spallina, Esq. is a resident of Florida and citizen of Florida and an Attorney at Law.
9. Donald R. Tescher is a resident of Florida and citizen of Florida and an Attorney at Law.
10. Jill Marla Iantoni is a resident and citizen of Illinois. She is daughter to SIMON and SHIRLEY.
11. Lisa Sue Friedstein is a resident and citizen of Illinois. She is daughter to SIMON and SHIRLEY.
12. S.T.P. Enterprises Inc. is believed to be an Illinois insurance agency believed to be owned by P. SIMON as President and D. SIMON as VP.
13. S.B. Lexington, Inc. Employee Death Benefit Trust, is a trust alleged to be managed by P. SIMON and D. SIMON.

14. S.B. Lexington, Inc. is an Illinois insurance agency managed by D. SIMON and P. SIMON.
15. National Service Association, Inc. is a Florida insurance consulting firm believed to be managed by SIMON prior to his death.
16. National Service Association, Inc. is an Illinois insurance consulting firm believed to be managed by P. SIMON and D. SIMON.

FACTS

I, Eliot Ivan Bernstein, make the following statements and allegations to the best of my knowledge and on information and belief and as a Pro Se Litigant:

17. That the alleged criminal acts defined herein are more fully defined in the Petitions and Motions listed below with URL hyperlinks to the filings, whereby the documents contained at the hyperlinks are hereby incorporated in entirety by reference herein with all exhibits therein, and where the Petitions and Motions were filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida / Probate ("Probate Court") case # 502012CP004391XXXXSB for the estate of Simon L. Bernstein, as follows:

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Answer & Cross Claim

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i. www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf

18. That in hearings held on SHIRLEY's estate on Friday, September 13, 2013 in the Probate Court, Honorable Judge Martin H. Colin ("Hon. Colin") told TED, SPALLINA, TESCHER and their counsel, Mark Manceri ("MANCERI"), that he should read them all their Miranda Rights after hearing their explanation how SIMON had notarized documents to close SHIRLEY's estate two months after he was deceased, Hon. Colin stated this fact twice in the hearings.
19. That further upsetting Hon. Colin in the hearing to the reopen the estate of SHIRLEY, which was ordered reopened, was that at no time after SIMON had passed had the court been notified by estate counsel of SIMON's death and that documents were being submitted to the Court after SIMON was deceased as if he was alive. The documents in SHIRLEY's ESTATE now admittedly fraudulently crafted by a TSPA contracted Legal Assistant/Notary Public and alleged forged after SIMON's death, were then filed with his Court and used to close the estate as if SIMON were alive at the time. Hon. Colin realized they had committed a fraud upon his court and him personally as he signed off to close the estate using these bogus documents.
20. From an excerpt from that hearing transcript, see attached, Exhibit 1 on September 13, 2013,

9 MR. SPALLINA: Yeah, it was after his date

10 of death.

11 THE COURT: Well, how could that happen

12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve

15 a petition after he's dead?

Answer to Cross-Claim

16 MR. MANCERI: Your Honor, what happened
17 was is the documents were submitted with the
18 waivers originally, and this goes to
19 Mr. Bernstein's fraud allegation. As you know,
20 your Honor, you have a rule that you have to
21 have your waivers notarized. And the original
22 waivers that were submitted were not notarized,
23 so they were kicked back by the clerk. They
24 were then notarized by a staff person from
25 Tescher and Spallina admittedly in error. They
1 should not have been notarized in the absentia
2 of the people who allegedly signed them. And
3 I'll give you the names of the other siblings,
4 that would be Pamela, Lisa, Jill, and Ted
5 Bernstein.

6 THE COURT: So let me tell you because I'm
7 going to stop all of you folks because I think
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda
10 warnings?

11 THE COURT: Everyone of you [referring to TED, SPALLINA, TESCHER
12 an MANCERI] might have to
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a
15 formal document filed here April 9, 2012,
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and
19 notarized on that same date by Kimberly. It's
20 a waiver and it's not filed with The Court
21 until November 19th, so the filing of it, and
22 it says to The Court on November 19th, the
23 undersigned, Simon Bernstein, does this, this,
24 and this. Signed and notarized on April 9,
25 2012. The notary said that she witnessed Simon
1 sign it then, and then for some reason it's not
2 filed with The Court until after his date of
3 death with no notice that he was dead at the
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's
7 enough to give you Miranda warnings. Not you
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the
14 transaction?

15 MR. SPALLINA: I was involved as the
16 lawyer for the estate, yes.



21. That the alleged insurance fraud taking place through the instant Breach of Contract Lawsuit in this Court is allegedly being committed by similar parties of the alleged estate frauds described herein and in Petitions 1-7, again misusing their fiduciary and professional powers to convert estate assets and TED, A. SIMON, the SLF should all be removed from further representing any parties in this Lawsuit, sanctioned and forced to retain non conflicted counsel in these proceedings.
22. ELIOT requests this Court take Judicial Notice of the alleged and admitted crimes herein and in Petitions 1-7 and on the Hon. Colin's warning and act on its own motions to prevent any further possible criminal activities and damages to others being incurred, until these alleged criminal and civil matters are fully resolved by this Court, the Probate Court, the Palm Beach County Sheriff and Florida Governor Notary Public Division.

FIRST ATTEMPT TO FRAUDULENTLY CONVERT THE DEATH BENEFIT

23. That the first attempt to convert the life insurance Policy #1009208 ("Policy(ies)) proceeds on SIMON's life by TSPA, TESCHER, SPALLINA, TED and P. SIMON took place on or about January 2013 when a death benefit claim was made according to Jackson National Insurance Company's ("Jackson") Counter Complaint for the Policy(ies) proceeds to be paid to a beneficial designations unknown by ELIOT.
24. That ELIOT and his children's former counsel after repeated requests have no records of the death benefit claim filed or any other records requested including the Policy(ies) and have been denied the information upon request by TSPA, TESCHER, SPALLINA, TED, P.

SIMON, Heritage Union Life Insurance Company (“Heritage”) and Reassure America Life Insurance Company (“RALIC”).

25. That Heritage refused to pay the Policy(ies) proceeds based on the death benefit claim filed, claiming it was legally deficient and they would therefore need a “court order” to determine if the beneficiary claimed was the legal beneficiary and thus the first attempt to claim the benefits failed.

SECOND ATTEMPT TO FRAUDULENTLY CONVERT THE DEATH BENEFIT – THE SAMR & SAMR TRUST

26. That the SAMR and SAMR TRUST is fully described, defined and exhibited in Petition 1, Section VII - “Insurance Distribution Scheme” Pages 30-37 and Pages 170-175, exhibit 7 - “Settlement Agreement and Mutual Release” (“SAMR”). The post mortem trust that would have been created under the SAMR to replace the lost “Bernstein Trust” aka “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” is termed herein as the SAMR TRUST (“SAMR TRUST”).
27. That once the death benefit claim was denied and a “court order” was necessary to pay the Policy(ies) proceeds, the SAMR and SAMR TRUST insurance trust and beneficiary fraud scheme, as further defined herein, was then proposed to ELIOT by TSPA, TESCHER, SPALLINA, TED, P. SIMON and D. SIMON.
28. That the SAMR & SAMR TRUST was proposed as a post mortem trust replacement created to remedy for an allegedly lost trust created by SIMON that is claimed to be the alleged

beneficiary of the Policy(ies), the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95."

29. That the SAMR TRUST was proposed by TSPA, SPALLINA, TESCHER, TED and P. SIMON as a means to convert the insurance proceeds from going to the estate of SIMON due to an alleged lost trust and where the proceeds under the SAMR TRUST they claimed would not go to the estate and would instead flow into the newly created post mortem SAMR TRUST, where a newly elected post mortem "trustee" TED, would then divvy it up to newly elected by TED beneficiaries of the SAMR TRUST.
30. That in this Court proceeding, in a response filed by A. SIMON, we learn who is divvying up the proceeds when he claims ("4/5") of SIMON's children, TED, P. SIMON, IANTONI and FRIEDSTEIN agree with the beneficiary designation that was filed in this Lawsuit.
31. That TSPA, TESCHER, SPALLINA, TED and P. SIMON further claimed that the SAMR TRUST was necessary to keep the proceeds estate tax free and free from creditors of the estate, despite that this would be a new post mortem trust designating new trustees and beneficiaries who were not elected by SIMON while he was alive.
32. That this post mortem SAMR TRUST was to be created without SIMON's knowledge, consent or keeping with his wishes he documented while alive, as it was done post mortem and thus ELIOT claims that it could not then be used to escape estate taxes or creditors legally and would be construed as an artifice to defraud.
33. That ELIOT sent letters to TSPA, SPALLINA, TESCHER, TED and P. SIMON and claimed that the SAMR TRUST appeared to be a sham trust and beneficiary scheme that was

potentially illegally attempting to circumvent SIMON's estate creditor liabilities and federal and state estate taxes.

34. That ELIOT refused to participate in the SAMR or SAMR TRUST and sent TSPA, SPALLINA, TESCHER, TED and P. SIMON a letter telling them to cease and desist any attempt at collection of the death benefit until ELIOT and his children could seek independent counsel to review the legality of the SAMR and SAMR TRUST.
35. That after ELIOT had the plan reviewed by legal counsel and was advised to not sign the SAMR or SAMR TRUST, as evidenced in Petition 1, and ELIOT sent letters to TSPA, SPALLINA, TESCHER, TED, P. SIMON and other potential beneficiaries notifying them of his findings that the SAMR and SAMR TRUST appeared a sham that could be construed as insurance fraud, tax evasion, creditor fraud and more.
36. That further ELIOT noticed them that no one appeared to be representing the grandchildren's alleged beneficial interests in the estate in the SAMR and SAMR TRUST, which was in conflict now with TED, P. SIMON, IANTONI and FRIEDSTEIN's interests beneficial interest to be gained in the Policy(ies) through the SAMR TRUST, as newly named trustees and beneficiaries in the SAMR TRUST.
37. That if the monies flowed to the estate and were paid to the estate beneficiaries, TED, P. SIMON, IANTONI and FRIEDSTEIN would not receive monies directly and only manage the money of their children as trustees for them and therefore since they would not be beneficiaries they were not in conflict but the SAMR TRUST or any scheme that inures Policy(ies) proceeds to them directly does put them in direct conflict and no one seemed to

be looking out for their own children, in fact, blindly looking the other way while attempting to convert the monies to themselves. This is an abomination of fiduciary duties and trust as trustees for their alleged children beneficiaries.

38. That IANTONI asked SPALLINA if she needed to get counsel for herself and her children due to conflicts created in the SAMR and SAMR TRUST, as ELIOT had stated her beneficial interests conflicted with her daughters beneficial interests, especially where the payout is substantially different depending on if her daughter received the benefit through the estate (1/10 share) or if she received it directly under the SAMR TRUST (1/5 share). The conflict here is significant and where IANTONI would favor the SAMR TRUST scheme versus a "court order," which would favor her daughter.
39. That IANTONI further asked SPALLINA if her daughter could later sue her for taking the proceeds directly under the SAMR TRUST and SPALLINA stated that "only if she finds out" or words to that effect.
40. That SIMON's daughter, P. SIMON, her husband D. SIMON and his brother A. SIMON through the SLF, believed to be A. SIMON and D. SIMON's law firm that works out of P. SIMON's offices at STP, worked with TSPA, SPALLINA, TESCHER, TED and P. SIMON in attempts to get the life insurance benefits of the Policy(ies) paid to the newly created post mortem SAMR TRUST created after SIMON's death and go against the beneficial wishes and desires and estate contracts of SIMON and SHIRLEY, as designated in their estate plans.
41. That initially, the SAMR TRUST was proposed to replace an allegedly lost "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95," with TED acting as the Trustee of the newly

created post mortem SAMR TRUST, as evidenced in the SAMR, by claiming he was the “trustee” of the lost trust that allegedly no executed copies exist for and therefore he was the “trustee” of the newly created SAMR TRUST with all the unknown fiduciary powers granted in the alleged lost trust, of which again, no executed copies or originals exist as claimed in TED’s response to Jackson’s Counter Claim.

42. That TED, TSPA, TESCHER, SPALLINA and P. SIMON all claimed that “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” was “lost” and that through TED, as the self-elected “trustee” of the new post mortem SAMR TRUST, they would then designate new beneficiaries that would replace the unknown ones in the lost trust. New beneficiaries designated by TED based on his belief that TED, P. SIMON, IANTONI and FRIEDSTEIN and possibly, without ELIOT’s knowledge or consent, ELIOT, were beneficiaries under the lost trust.
43. That TSPA, SPALLINA, TESCHER, TED and P. SIMON have various alleged fiduciary capacities as estate counsel, personal representatives and trustees responsible for keeping and maintaining records of the Policy(ies) and the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” that SPALLINA, TESCHER, TED, P. SIMON, D. SIMON and A. SIMON claimed was the last known beneficiary on the Policy(ies).
44. That P. SIMON over the years since the Policy(ies) was issued acted as a fiduciary of several of the trusts that controlled the Policy(ies) and the distribution of proceeds for beneficiaries who are elected as contingent beneficiaries by employees in a Voluntary Employee Beneficiary Association VEBA 501(c)(9) life insurance trust she controls, that held



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SIMON's Policy(ies) and many other thousands of policies, through several companies owned and operated by SIMON and then P. SIMON and D. SIMON.

45. That TSPA, SPALLINA and TESCHER have various alleged fiduciary capacities regarding the Policy(ies) and the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" as they did the estate planning work concerning the Policy(ies) and trusts and failed to properly protect the beneficiaries of the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" and the estate beneficiaries by properly documenting the beneficiaries in the alleged Wills and Trusts of SIMON.
46. That by failing to properly document the beneficiaries of the lost trust, failing to maintain records of the Policy(ies) and trusts and failing to clearly define the beneficiaries, TSPA, SPALLINA and TESCHER have caused liabilities by damaging all of the beneficiaries of the estate and Policy(ies).
47. That TED has various alleged fiduciary capacities as the self-appointed alleged "trustee" of the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95," including the alleged power to file suit on its behalf and yet TED has no documented evidence to support this claim according to Jackson. TED is misusing alleged fiduciary powers to convert Policy(ies) proceeds to himself, P. SIMON, IANTONI & FRIEDSTEIN, secreted from ELIOT and his counsel and to the disadvantage of ELIOT and his children.
48. That TED and P. SIMON both claim to have once upon a time been in possession of the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" and have claimed to have witnessed the language contained therein. From their recollections they claim recalling that

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TED was “trustee” of the lost trust and they were named “beneficiaries.” These legally insufficient claims are also made by two people who stand to gain individually from their recollections putting them in conflict with other potential beneficiaries, including their own children.

49. That these alleged fiduciary roles of TED for the lost trust now are being asserted in attempts to process a death benefit claim without any signed or executed copy of the lost trust. From Jackson’s Counter Claim there appears to be insufficient evidence to pay a claim to this insurance trust and beneficiary fraud scheme.
50. That after claiming to have lost the Policy(ies) and trust and assigning TED alleged fiduciary responsibilities, TED and P. SIMON then attempt to redirect and convert benefits by naming themselves as newly elected post mortem designated beneficiaries of the Policy(ies). That ELIOT alleges that this misleading information in the death benefit claim may constitute a basis for insurance fraud and more.
51. That Bernstein family insurance agencies founded by SIMON allegedly sold the Policy(ies) and administered the trusts concerning the Policy(ies). Suddenly, when SIMON, a meticulous record keeper, passes away, all those with control of the Policy(ies) and who have fiduciary responsibilities and liabilities regarding the Policy(ies) and trusts involved in this Lawsuit, now claim that the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” is missing and lost with no executed copies in existence and that it was the last known beneficiary.



52. That all parties with fiduciary responsibilities for the Policy(ies) and the trusts named in this Lawsuit are alleged to have fiduciary liabilities and in certain instances with the Attorneys at Law, professional liabilities, from the damages to the true and proper beneficiaries for their actions or inactions and for the damages caused by their breaches of fiduciary and professional responsibilities and alleged violations of law.
53. That ELIOT claims that TSPA, SPALLINA, TESCHER, TED and P. SIMON have allegedly instead **suppressed and denied** the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” and have not “lost” it or found it to be “missing” as they claim and this was done with intent to commit fraud upon the true and proper beneficiaries of the Policy(ies), this Court and the estate beneficiaries.
54. That ELIOT states that TED and P. SIMON were excluded as beneficiaries of the Policy(ies) and trusts, as TED and P. SIMON were wholly excluded and disinherited from the estates of both SIMON and SHIRLEY and therefore allegedly excluded in all insurance contracts and policies thereunder.
55. That if the estate received the Policy(ies) proceeds and then determined the beneficiaries, there is very little likelihood that TED and P. SIMON would be entitled to any Policy(ies) proceeds in their name if they flowed into the estate to the estate beneficiaries, as they have been wholly excluded from the estates of both SIMON and SHIRLEY.
56. That it should be noted by this Court that TED and P. SIMON are alleged in Petition 1 to be the cause of attempting to force SIMON to allegedly change the beneficiaries in his estate

A handwritten signature in black ink is written over a circular fingerprint. The signature is stylized and appears to be 'P. Simon'. The fingerprint is a standard ten-print pattern.

plan, in near deathbed changes allegedly made weeks before his death and while under extreme physical and emotional duress at the time.

57. That it is now unclear due to the Notary Public ADMITTED Fraud and alleged Forgery in the estate of SHIRLEY and the alleged Fraudulent and Legally Defective estate documents in SIMON, if SIMON actually signed any changes to his estate plan prior to his death or if the documents were signed and notarized for him after he died, in efforts to change SIMON's estate disposition and wants.
58. That prior to the alleged near deathbed changes made by SIMON, under duress, TED, P. SIMON and their children were wholly disinherited from the estates of both SIMON and SHIRLEY.
59. From the alleged May 20, 2008 "Shirley Bernstein Trust Agreement"² the language regarding beneficiaries is as follows,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my

² That Shirley's May 20, 2008 trust language was used here, as the May 20, 2008 "Simon Bernstein Trust Agreement" has been suppressed and denied to ELIOT by TSPA, TESCHER and SPALLINA for over a year now. They have refused to release the SIMON original trust despite repeated oral and written requests from ELIOT and his children's former counsel, Christine Yates at Tripp Scott law firm in Fort Lauderdale, FL. The language is presumed to be the same although cannot be verified at this time.

children, **TED S. BERNSTEIN ("TED")** and **P. SIMONELA B. SIMON ("P. SIMON")**, and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided[emphasis added], however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and P. SIMON, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder."

60. From the alleged November 18, 2008 "First Amendment to Shirley Bernstein Trust Agreement" the language is as follows,

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, **TED S. BERNSTEIN ("TED")** and **P. SIMONELA B. SIMON ("P. SIMON")**, shall be deemed to have predeceased the survivor of my spouse and me [emphasis added], provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their respective lineal descendants all predecease the survivor of my spouse and me, then TED and P. SIMON shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

61. That even after the near deathbed changes allegedly made by SIMON under duress or perhaps made post mortem, as now TSPA's Notary Public Kimberly Moran has admitted to notarizing documents in his name, months after his death, TED and P. SIMON where again wholly disinherited from the estates of SIMON and SHIRLEY and only their adult children are alleged beneficiaries.
62. That from the alleged July 25, 2012 "Simon L. Bernstein Amended and Restated Trust Agreement" the language is as follows,

"Children Lineal Descendants. The terms "child," "children," "grandchild," "grandchildren" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal

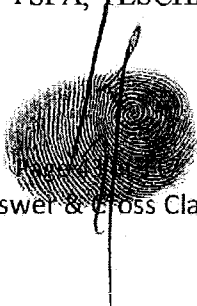
descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. **Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, P. SIMONELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime [emphasis added].**

63. That the alleged Personal Representatives to the estates, TSPA, TESCHER and SPALLINA, have since SIMON's passing worked and shared information almost exclusively with TED and P. SIMON, the two children who were both wholly excluded from benefits of the estates of SIMON and SHIRLEY in any Will or Trust established. Both TED and P. SIMON are alleged to have been on bad terms with SIMON and SHIRLEY at the time of their deaths due to their exclusion from further benefits in the estates, as they already had been compensated while living as they inherited family businesses worth fortunes and ELIOT, IANTONI and FRIEDSTEIN did not.
64. That after SHIRLEY passed until the day of SIMON's death almost twenty two month, TED and P. SIMON led an assault on SIMON and recruited IANTONI and FRIEDSTEIN and together the four of them banned and precluded their seven children from seeing SIMON, their grandfather, claiming it was over his relationship with his companion, as fully defined in Petition 1. That this is why SIMON considered altering he and SHIRLEY's long established estate plans in May 10, 2012 and sought agreement from his children that if he chose to make any changes to his estate plan it would put an end to these disputes and torture of his soul.

65. That in a May 10, 2012 conference call with TSPA, TESCHER, SPALLINA, TED, P. SIMON, ELIOT, IANTONI and FRIEDSTEIN, SIMON sought and received verbal agreement from his children to have ELIOT, IANTONI and FRIEDSTEIN give up their inheritances and divide it to the grandchildren equally to resolve any duress and disputes that were causing him pain and suffering.
66. That the disputes and banning of themselves and all their children of SIMON however did not stop after the May 10, 2012 meeting as agreed and SIMON appears to have had a change of mind and never made the changes to his or SHIRLEY's estate plans and the changes appear to have been done post mortem, as essential documents to the alleged changes are all Legally Defective and therefore NULL and VOID.
67. That despite repeated requests, TSPA, TESCHER, SPALLINA, TED and P. SIMON have shut out ELIOT and his children's counsel from virtually ALL estate information, documents and assets, including but not limited to, accountings, inventories, Policy(ies) information, insurance contracts, corporate accountings, asset liquidation details, accountings and legal documents, various trusts information and all assets of the SIMON and SHIRLEY estates.
68. That for over a year, with the aid of TSPA, TESCHER, SPALLINA, TED, P. SIMON and others have rushed to liquidate assets and looted the estate in a variety of schemes behind the backs of ELIOT and his children's former counsel and if it were not for Jackson's adding ELIOT as Defendant in the Lawsuit, ELIOT would never have known about this alleged fraudulent Lawsuit and the insurance policy and trust scheme being attempted to convert the Policy(ies) proceeds.



69. That this suppression and denial of virtually all information and documents in the estates from certain beneficiaries to the advantage of others, including this Lawsuit, which was filed without certain beneficiaries knowledge and consent , has gone on for almost three years in SHIRLEY's estate and over a year in SIMON's estate.
70. That it is alleged that these acts of suppression and denial of information and more are intended to hide criminal activities taking place to loot the estates through a variety of alleged financial and other crimes, as fully set forth in Petitions 1-7.
71. That the SAMR and SAMR TRUST that was proposed to ELIOT by TSPA, SPALLINA, TESCHER, TED and P. SIMON was never signed by ELIOT. ELIOT noticed all parties involved that he rejected such SAMR and SAMR TRUST as a scheme to reassign beneficiaries with post mortem designated beneficiaries through suppression and denial of trust documents that allegedly would constitute, Insurance Fraud, Conversion and more.
72. That ELIOT noticed all parties that he rejected such plan as an attempt to improperly avoid Estate Taxes through a sham trust that was created post mortem and therefore how could SIMON have made it irrevocable or anything at all.
73. That ELIOT noticed all parties that he rejected such plan as an attempt to improperly attempt to hide assets from creditors of the estate using a post mortem trust to convert assets with known creditors to the estate.
74. That without ELIOT or his children's counsel approval of the SAMR and SAMR TRUST scheme and while ELIOT was led by TSPA, TESCHER, SPALLINA, TED, P. SIMON,

A handwritten signature in black ink, appearing to be "Answer & Cross Claim", written over a circular stamp or seal.

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IANTONI and FRIEDSTEIN to believe that they were seeking a “court order” to approve their SAMR scheme and new and secreted plan was hatched.

THIRD ATTEMPT TO FRAUDULENTLY CONVERT THE DEATH BENEFIT – THE JACKSON LAWSUIT FOR BREACH OF CONTRACT

75. That without ELIOT and his children’s counsel knowledge or consent the third failed attempt to convert the Policy(ies) proceeds was hatched by TSPA, TESCHER, SPALLINA, TED, P. SIMON, D. SIMON, A. SIMON, IANTONI and FRIEDSTEIN working together and secreted from ELIOT and his children’s counsel with scienter.
76. That this third attempt to convert the Policy(ies) proceeds began with the filing of this frivolous “breach of contract” Lawsuit to attempt to convert the benefits against the wishes of SIMON’s beneficiary designation, in order to profit for themselves at the detriment of the true and proper beneficiaries, including allegedly their own children.
77. That once the SAMR and SAMR TRUST failed to get ELIOT or his children’s counsel approval, without notice and knowledge of ELIOT and other beneficiaries, TED, instead of seeking the demanded “court order” to determine the beneficiaries as requested by RALIC, claimed to be the “trustee” and a “beneficiary” of the “lost” trust, the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” and instead filed this Lawsuit with TED acting in a self-professed and self-appointed fiduciary capacity for the “lost” trust and Policy(ies) and designating himself and others as newly elected beneficiaries.
78. That since claiming “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” is “lost” and “missing” and then unable to get the SAMR/TRUST approved by all parties and the Probate

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Court to be the beneficiary, TED represented by A. SIMON instead filed this Lawsuit demanding that Jackson now pay the death benefits based on a breach of contract suit for Jackson's refusal to pay the death benefit claim based on the legally deficient death benefit claim initially submitted, as indicated in Jackson's Counter Claim for damages.

79. That through this Lawsuit, TSPA, TESCHER, SPALLINA, TED and P. SIMON are now attempting to avoid having to obtain a court order as requested by RALIC, to first determine who the beneficiary(ies) is and instead are attempting to convert the Policy(ies) proceeds through this baseless breach of contract action that TED was advised by counsel he had no "authority" to file according to Jackson.
80. That ELIOT alleges that this Lawsuit is an attempt to have this Court pay the Policy(ies) proceeds to a newly created post mortem trust similar to the SAMR TRUST or other improper beneficiaries, through a smoke and mirrors illusion, mired in a "Name Game" further defined herein, using alleged former Policy(ies) beneficiaries names, including but not limited to the "lost" "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" in order to replace the allegedly unknown beneficiaries of the "lost" trust with newly elected beneficiaries, possibly in a new post mortem trust attempting to be inserted into this Lawsuit in the confusion created with the variety of names being asserted as beneficiary.
81. That Jackson claims in their Answer that they are unclear if TED has the alleged fiduciary capacities in the trusts and Policy(ies) he claims necessary to institute the Lawsuit or the death benefit claim and they are unclear of the names asserted in the complaint as they are confusing and even question the existence of certain trusts entirely.

82. That TED and P. SIMON are attempting to designate new beneficiaries after SIMON has passed, claiming that they “believe” they were beneficiaries of the “lost” trust and therefore they would be beneficiaries of two fifths of the Policy(ies) proceeds but providing no evidence or proof of such claims other than their beliefs.
83. That TED, P. SIMON, D. SIMON and A. SIMON are all career life insurance professionals with extensive trust knowledge and legal knowledge.
84. That TED is allegedly misusing his “alleged” fiduciary powers in the estates of SHIRLEY and SIMON, fully described in the Petitions 1-7 and in this Lawsuit where his fiduciary claims are imagined and undocumented.
85. That TED now makes efforts in this Lawsuit to assume fiduciary powers in handling assets of SIMON’s estate, based on his belief that he was “trustee” of the lost trust and on his own belief a “beneficiary” and where TED has no fiduciary capacities whatsoever in the estate of SIMON or through any trusts of SIMON that are not “lost.” That supporting TED’s beliefs and the actions taken based on those beliefs in effort to convert the Policy(ies) proceeds are P. SIMON, IANTONI and FRIEDSTEIN, all who stand to gain from such insurance beneficiary and trust scheme.
86. That TED’s filing of this Lawsuit as an imagined fiduciary of a “lost” trust is an attempt to convert benefits of the Policy(ies) for the benefit of TED and P. SIMON, by deceiving the beneficiaries of the Policy(ies), the beneficiaries of the estate of SIMON, deceiving insurance companies Heritage, RALIC and Jackson are all an attempt to perpetrate a fraud on, this

Court, the Probate Court, the true and proper beneficiaries of the estate of SIMON, the beneficiaries of the Policy(ies) and the beneficiaries of the trusts of SIMON.

87. That TSPA, SPALLINA, TESCHER, SLF, P. SIMON, D. SIMON, A. SIMON and TED have filed this Lawsuit without proper notice to all of the potential beneficiaries and on information and belief have worked together, with IANTONI and FRIEDSTEIN, to secret this Lawsuit from ELIOT and his children's former counsel.
88. That IANTONI and FRIEDSTEIN are also alleged in TED's Answer to Jackson's Counter Complaint to be part of "4/5" of SIMON's children (TED, P. SIMON, IANTONI & FRIEDSTEIN) who are in agreement with the payout to the proposed beneficiary of this Lawsuit and have conspired together to convert the Policy(ies) proceeds.
89. That the "4/5" of SIMON's children in agreement of the beneficiaries of the Policy(ies) includes themselves personally and is to the detriment of their own children who are alleged beneficiaries of the estate, where they are trustees to their children who would allegedly be entitled to the Policy(ies) proceeds if the estate were determined to be the beneficiary.
90. That TED has numerous conflicts of interest in acting in legal and fiduciary capacities in this Lawsuit with various parties. TED would be getting benefits directly to himself while acting as the "alleged" Trustee of the missing "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" and electing himself as a beneficiary to convert the funds, while also simultaneously acting as a trustee for his children beneficiaries of the estate of Simon and Shirley, where the children would get the Policy(ies) proceeds if they flowed through to the estate versus the insurance fraud beneficiary and trust scheme.

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91. That P. SIMON and D. SIMON would get benefits paid directly to their family from the efforts of D. SIMON's SLF law firm, as SLF represents TED in this Lawsuit and if they are successful in converting the benefits to the proposed insurance fraud beneficiary and trust scheme, SLF, P. SIMON and D. SIMON would benefit directly by splitting part of the loot, which poses conflicts in SLF and A. SIMON's representation of TED and the lost trust.
92. That additionally, P. SIMON and D. SIMON would be doing this conversion of benefits directly to themselves while acting as trustee for their child beneficiary of the estate of Simon and Shirley, where their child would get the Policy(ies) proceeds if they flowed through to the estate versus the insurance fraud beneficiary and trust scheme.
93. That neither TED nor P. SIMON would gain any benefits of the Policy(ies) without their attempted beneficiary and trust scheme because if the Policy(ies) benefits were paid instead to the estate, due to the missing and "lost" trust, the benefits would then distributed to either three of five of SIMON and SHIRLEY's children, ELIOT, IANTONI and FRIEDSTEIN or to SIMON or SHIRLEY's ten grandchildren in equal shares, again either way TED and P. SIMON are wholly excluded.
94. That ELIOT states on information and belief that a policy with a missing beneficiary(ies) would legally be paid to the estate and the Probate court would then rule on whom the final beneficiaries of the insurance proceeds would be.
95. That Jackson and Heritage and RILAC have found flaws in the death benefit claim filed for the Policy(ies) and have refused to pay claims based on fundamental deficiencies.

96. That this alleged shell “Name Game³” being played in this Lawsuit uses the names of trusts and beneficiaries and then attempts to confuse the names by renaming them in a confusing manner, in order to have the “lost” trust renamed under a variety of confusing names, as evidenced in Jackson’s Answer and then have the Court pay out an improper beneficiary(ies).
97. That the alleged intentional confusion and misdirection involving these names is what has caused the denial of payment of the proceeds in part by the carrier and ELIOT claims this insurance trust and beneficiary fraud naming scheme is being perpetrated in this Court with scienter, in efforts to mislead this Court and Jackson so that they may pay the wrong beneficiary(ies) the Policy(ies) proceeds and convert the Policy(ies) proceeds.
98. That this “Name Game” being attempted in this Lawsuit to confuse the parties through this trust and beneficiary insurance fraud naming scheme is also in efforts to have the Policy(ies) proceeds circumvent the Probate Court and the estate beneficiaries and get the Policy(ies) benefits instead paid through this Court to improper beneficiaries in substitution for the lost trust alleged beneficiaries and to evade seeking a “court order.”
99. That only if the Cross Defendants and Third Party Cross Defendants can confuse this Court to now payout the death benefit according to their insurance trust and beneficiary fraud scheme can they derive benefits from the Policy(ies), as their attempt to pull the wool over the insurance companies’ eyes and have the benefits paid to their alleged fraudulent death benefit claim and the designated new beneficiaries thereunder has failed and led to this baseless Lawsuit.

³ <http://www.youtube.com/watch?v=GOgNkrQBrdU> “Name Game” performed by Jessica Lange for the television show “American Horror Story”

Case 1:13-cv-03643
Answer to Cross Claim

100. That in Petition 1, Pages 34-41 under Section “VII. INSURANCE PROCEED DISTRIBUTION SCHEME”, the proposed “Settlement Agreement and Mutual Release” agreement that would create the new SAMR TRUST to replace the lost trust is contained in Petition 1 on Pages 173-179 and titled "Settlement Agreement and Mutual Release", as exhibit 7 and ELIOT claims that the SAMR TRUST is being secreted into this Lawsuit in a confusing name with a prior beneficiary as a “lost” trust cannot be the beneficiary and therefore they must substitute a new trust identical or similar to the proposed SAMR TRUST or wholly new beneficiary designations that ELIOT is unaware of having not seen the death benefit claim submitted.
101. That the SAMR was drafted on or about December 06, 2012 by an unknown Attorney at Law and law firm, as no law firm markings are on any of the pages, however, on information and belief, the unknown law firm is believed to be TSPA and Attorneys at Law TESCHER and SPALLINA.
102. That the SAMR was distributed by TSPA, SPALLINA and TED to various parties through mail and wire.
103. That the names for the trusts in the “Name Game” being played in this Lawsuit as part of the alleged insurance and trust fraud scheme and their aliases are believed to be as follows:
- a. “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” alleged “lost” with no original executed document or copies of or as ELIOT claims, suppressed and denied. TED claims to be “Trustee” and a “Beneficiary” however, he cannot apparently prove these claims as the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” is

“lost” or suppressed and denied and therefore these claims to interests in the “lost” trust are merely conjecture. “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” is used interchangeably with the following trust names in this Lawsuit thus far,

1. “Bernstein Trust” abbreviated by TED in the initial complaint and
2. “Simon Bernstein Trust” according to Jackson’s response this trust MAY also be called “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” see item 9 of their response.
3. “Simon Bernstein Insurance Trust dated 6/21/1995, Trust” (note the addition of the word Trust inside the quotations) is from Jackson Answer in 20 and is stated to be a former named beneficiary on the Policy(ies) and may refer to “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95.” That it is believed that this may be a variance in the name “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95”, however due to the variance in names it has been listed as a separate trust herein.
4. “The Bernstein Trust” with a capitalized T in the “The” within the quotations. This trust is never defined in the pleadings but is used in TED’s response to Jackson’s Counter Claim frequently and apparently interchangeably with the “Bernstein Trust.” This trust is almost identical in name to the “Bernstein Trust” and yet, perhaps they too are different as will be advanced further herein. However, due to the slight variance in titles it has been listed as a separate trust herein until properly defined.
5. “Simon Bernstein Trust” according to Jackson in 9 of their response, “is, upon information and belief, the Bernstein Trust listed in paragraph 3, [listed as the

“Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 ” in paragraph 3] above, and was a named contingent beneficiary of the Policy. However, based on the variance in title, to the extent it is a separate trust from the Bernstein Trust referenced above, it is named separately.” That ELIOT is uncertain at this time where Jackson pulled this reference to a “Simon Bernstein Trust” from, as it is undefined in any pleadings and suddenly falls from the sky in their response. What is this “Simon Bernstein Trust” and the Court should demand copies of any records relating to this trust be provided to all parties of the Lawsuit and have it properly defined in the pleadings.

- b. “Simon Bernstein Trust, N.A.” according to Jackson IS the “Contingent Beneficiary” named at the time of SIMON’s death!⁵ However, in TED’s response to Jackson’s Counter Complaint, TED claims that the “lost” the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” was the “sole” Beneficiary at the time of SIMON’s death and according to Jackson’s records this is wholly untrue. This difference in beneficiaries at time of death is a major and significant discrepancy in who the actual beneficiaries are alleged to be by the parties to this Lawsuit.

That if Jackson is correct on the Policy(ies) primary and contingent beneficiaries at SIMON’s death, then the claim in TED’s response to Jackson, in the original complaint filed and further stated in written and oral statements by TSPA, TESCHER, SPALLINA, TED, P. SIMON, D. SIMON and A. SIMON, that the “sole” beneficiary was “Simon

⁵ “LaSalle National Trust, N.A.” was according to Jackson the “primary beneficiary,” which they appear unclear if it was acting as trustee to the “SIMON Bernstein Trust, N.A.”

Answer to Claim

Bernstein Irrevocable Insurance Trust Dated 6/21/95” becomes a false and misleading statement as to the true and proper beneficiaries at the time of SIMON’s death.

That if the final primary beneficiary was “LaSalle National Trust, N.A.” and the final contingent beneficiary listed on the Policy(ies) is the “Simon Bernstein Trust, N.A.” the questions then are where are copies of the “Simon Bernstein Trust, N.A.,” who drafted and executed this trust and who are the trustees and beneficiaries of this trust and why has this information been suppressed and false and misleading information proposed instead?

That it therefore appears that the final Policy(ies) beneficiary(ies) must first be determined to be either “Simon Bernstein Trust, N.A.” or “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95, Trust” or “Simon Bernstein Insurance Trust dated 6/21/1995” or other unknown. If the contingent beneficiary at the time of death is determined to be according to Jackson’s account “Simon Bernstein Trust, N.A.,” then “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” and any variation of its title or any earlier beneficial interests become moot and this Lawsuit further becomes baseless and an Abuse of Process, other than as evidence of, an attempted insurance fraud on the “Simon Bernstein Trust N.A.” beneficiaries, Insurance Fraud on the insurance carriers, Fraud on this Court, Fraud on the Probate Court, Fraud on the estate beneficiaries of SIMON’s estate and more.

- c. “SAMR TRUST” – is the Settlement & Mutual Release Trust as exhibited in Petition 1 in a draft of the post mortem trust proposed to replace the “lost” trust and to present to a judge for a court order that never took place.

Answer to Simon's Claim



That ELIOT alleges that the SAMR TRUST or some variation of it, is being referred to in these pleading as "The Bernstein Trust" or the "Simon Bernstein Trust" or any of the UNDEFINED trusts referenced herein and in Jackson's Answer, so as to cause confusion and hope no one notices that these undefined trusts actually reference the proposed SAMR TRUST or some similar trust and beneficiary scheme, with alleged new beneficiaries and trustees designated after SIMON's passing by a "alleged trustee" of a "lost" trust.

That ELIOT refused to sign the SAMR as further defined herein and the undefined trusts attempting to claim benefits through this Lawsuit may be trusts done without his knowledge or consent and used in this Lawsuit to attempt to circumvent the true and proper beneficiaries on record with the insurance carriers through a cleverly crafted name game.

- d. "S.B. Lexington, Inc. Employee Death Benefit Trust" used interchangeably with the "Lexington Trust" by Jackson in their response.
- i. "LaSalle National Trust, N.A." the "primary beneficiary" according to Jackson's Counter Complaint at the time of SIMON's death.
- e. "S.B. Lexington, Inc. 501(c)(9) VEBA Trust"

104. That the named beneficiaries of the Policy(ies) according to Jackson's Counter Complaint are as follows,

- a. "Simon Bernstein " – This appears impossible however, as it would be impossible for one to name oneself as beneficiary of an insurance policy.

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Answer to Cross Claim



- b. "First Arlington National Bank, as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust"
- c. "United Bank of Illinois"
- d. "LaSalle National Trust, N.A."
- e. "LaSalle National Trust, N.A., Trustee of the VEBA trust"
- f. "Simon Bernstein Insurance Trust dated 6/21/1995, Trust"
- g. "Simon Bernstein Trust, N.A." the final "contingent beneficiary" according to Jackson that is listed on the Policy(ies) at the time of SIMON's death.

105. That according to Jackson at the time of SIMON's death the Primary Beneficiary is "LaSalle National Trust, N.A." and the Contingent Beneficiary is the "Simon Bernstein Trust, N.A."⁶ Paragraph 15-16 of their response.

106. That TED claims to this Court that the lost "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" aka "Bernstein Trust" was the "sole" beneficiary of the Policy(ies) at the time of SIMON's death to this Court.

107. That TED, TSPA, SPALLINA, TESCHER and P. SIMON have similarly given this allegedly misleading information regarding the beneficiary at the time of death to the beneficiaries of the estate and counsel for certain beneficiaries, while suppressing, denying and secreting the

⁶ On information and belief, ELIOT claims that ELIOT and his wife Candice Bernstein and their three children were the named beneficiaries at the time of SIMON's death under whatever trusts where in existence at the time or directly, including but not limited to, the "SIMON Bernstein Trust, N.A." and that SIMON may have also added Maritza Puccio for a share of the benefits prior to his death.

legal named beneficiary "Simon Bernstein Trust, N.A." and thereby secreting from the designated beneficiaries thereunder their interests.

108. That Jackson claims in Paragraph 18,

"Subsequent to the Insured's death, TED Bernstein, through his Florida counsel (who later claimed Bernstein did not have authority to file the instant suit in Illiuois on behalf of the Bernstein Trust and withdrew representation) [emphasis added], submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, allegedly as the trustee of the "Bernstein Trust."

That ELIOT alleges that this Lawsuit was still filed after being advised by counsel of the legal defects but now with new conflicted counsel, SLF and A. SIMON, knowing of the lack of authority TED was advised by counsel of and this represents Abuse of Process.

109. That Jackson claims in Paragraph 19 that neither TED, nor anyone else, could locate the "Bernstein Trust" that TED claims is the beneficiary of the Policy(ies).

110. That instead of seeking the Probate Court determination and getting a "court order" as to who the beneficiaries would be in the event of a missing beneficiary designation and "lost" trust, this suit was instead filed in apparent effort to evade the determination of the Probate Court and secretly convert the Policy(ies) proceeds before ELIOT was alerted and despite his protestations that no distributions be made until he and his children's counsel could review

their alleged insurance trust and beneficiary fraud scheme and approve of it with a “court order.”

111. That an old beneficiary designation of a “lost” trust is now being used to make claims for the Policy(ies) proceeds in this Lawsuit, instead of the beneficial designation with the insurance carriers at SIMON’s death, namely the “Simon Bernstein Trust, N.A.”

112. That therefore, despite whether the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” aka “Bernstein Trust” is “lost” or not or what it is called, **it was not the Beneficiary at the time of SIMON’s death according to Jackson** and therefore, would not be entitled to make a claim for the Policy(ies) proceeds. Perhaps this is why all of the records of the Policy(ies) and trusts have been secreted from certain estate beneficiaries and their counsel by TSPA, TESCHER, SPALLINA and TED, so as to hide from them whom the beneficiaries under the “Simon Bernstein Trust, N.A.” trust are to the advantages of some and disadvantage of others and mislead everyone by misrepresenting the real beneficiary(ies) and converting the Policy(ies) proceeds.

113. That ELIOT claims that Jackson, Heritage and RALIC should have copies of the “Simon Bernstein Trust, N.A.,” as well as, TSPA, SPALLINA and TESCHER and possibly P. SIMON and others named in the Lawsuit.

114. That ELIOT and others were misinformed, allegedly with intent, by TSPA, TESCHER, SPALLINA, TED and P. SIMON, that the beneficiary of the Policy(ies) was “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” aka “Bernstein Trust” at the time of SIMON’s death. Where they stated they had spoken to the carriers and were “friendly” with

them and received the beneficiary designations directly from the insurance carriers and at first claimed to have copies of the Policy(ies) and only later, when ELIOT began demanding to see the Policy(ies), did they then claim to have “lost” their copies or not possess them at all, similar to the “lost” trust claims.

115. That ELIOT alleges the copies of the Policy(ies) are instead suppressed and denied to the beneficiaries, in order to perfect their insurance and trust fraud scheme and deny the true and proper beneficiaries of the “Simon Bernstein Trust, N.A.” of the Policy(ies) proceeds and convert them to themselves and others.

116. That Jackson further asserts in Paragraph 20, “**Jackson is not aware whether the Bernstein Trust even exists**, and if it does whether its title is the ‘Simon Bernstein Insurance Trust dated 6/21/1995, Trust’ as captioned herein, or the ‘Simon Bernstein Trust, N.A.’, as listed as the Policy’s contingent beneficiary (**or otherwise**), and/or if Ted Bernstein is in fact its trustee.” [emphasis added].

117. That the “otherwise” referenced by Jackson above, may be the SAMR TRUST or some variation of it, that is being allegedly secreted into this Lawsuit and again this may also be the undefined trusts or misnamed trusts referenced in pleadings by TED and causing Jackson to deny the claim and file a counter complain to this breach of contract Lawsuit.

118. That in TED’s August 30, 2013 Answer to Jackson’s Counter Complaint TED and A. SIMON start off the “Name Game” in the caption by using an abbreviated naming of the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” naming it the “Bernstein Trust.” However, in their caption in their answer to Jackson, which is all capitalized and

reads, **THE BERNSTEIN TRUST**, it is impossible to tell whether this reference in the caption is the undefined “The Bernstein Trust” or if it is the “Bernstein Trust” due to the use of capitalization in the caption. Yet, if it is not the same, this changes everything in the pleading to read wholly different and who the beneficiaries are and who is making representations in the pleadings.

119. That TED then claims through his brother-in-law counsel that TED is the “trustee” of the “Bernstein Trust” and therefore trustee of the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95.” Let this Court read their response without renaming the alleged “lost” “Simon Bernstein Insurance Trust dated 6/21/1995” as the renamed “Bernstein Trust” or any other abbreviation given, in order to clarify the matters and it then becomes apparent that a “lost” trust with no executed copies is attempting to make a claim for the Policy(ies), and where the lost trust was not even the beneficiary on the Policy(ies) at the time of SIMON’s death.

120. That this Court should note that no matter the name of the trust, if the trust is “lost” as alleged, how can anyone claim to be the “trustee” or be a “beneficiary” or know what the terms of the trust are with any certainty and why it is believed a “court order” was requested by the life insurance company HERITAGE.

121. That in their Answer to Jackson, in response to Jackson’s assertion 1, TED claims, “Ted Bernstein and “The Bernstein Trust” [emphasis added and note that The is within the quotations] admit that Jackson has tendered the death benefit to the court.” ELIOT states the “The Bernstein Trust” cannot make any claims or assertions in the pleadings when it has not been defined in the pleadings and thus does not exist.

122. That even if this "The Bernstein Trust" is a grammatical error in name used in the pleadings and it refers to the allegedly lost "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" defined as "Bernstein Trust" not "The Bernstein Trust" it would be unable to assert anything on anyone's behalf, as there are no apparent records of it and just best guesses as to who the trustees and beneficiaries are and where it is not even the final beneficiary according to Jackson.

123. That with all these confusing names and baseless claims asserted in this Lawsuit, Jackson did not just pay the claim on demand for breach of contract but instead filed a counter complaint and thus the third attempt to convert the Policy(ies) proceeds to the wrong beneficiaries has hit another "bump in the road."

124. That both D. SIMON and A. SIMON and the SLF law firm are conflicted from handling this Lawsuit and pleading in these matters, as D. SIMON would directly benefit from this scheme through conversion of the Policy(ies) proceeds to his wife and family directly, therefore neither his law firm or his brother, for similar conflicts, would be able to legally file this Lawsuit and thus may represent a knowing Abuse of Process.

125. That the failure to properly know whom the beneficiaries of the Policy(ies) are is primarily a result of TSPA, TESCHER and SPALLINA's failure to legally document the beneficiaries of the Policy(ies) and maintaining copies of the trusts and Policy(ies) or other necessary documents to prove the beneficial interests in lieu of not possessing the key documents when preparing and executing the estate plans of SIMON and SHIRLEY.



126. That in an investigation with the Florida Governor's Office Notary Complaint Division pertaining to the documents that give TSPA, TESCHER, SPALLINA and TED alleged fiduciary powers in the estates of SIMON and SHIRLEY, the Licensed Notary Public who Notarized certain of the estates documents has now ADMITTED AND ACKNOWLEDGED that she has committed Fraud by ILLEGALLY NOTARIZING certain documents, including Fraudulently Notarizing SIMON's signature on a document and allegedly forging the signature months after he was deceased.
127. That these acts are illegal and the documents that give TSPA, TESCHER, SPALLINA and TED fiduciary powers in the estates of SIMON and SHIRLEY may have been illegally obtained after death of SIMON. ELIOT has produced the Response of the Notary Public, ELIOT's Response to the Notary and the original complaint filed against the Notary, in exhibits contained in Petition 7, exhibit No. 1, 2 & 3.
128. That it is alleged that the Cross Defendant and Third Party Defendants have committed Civil Conspiracy, Professional Malpractice, Insurance Fraud, Mail and Wire Fraud, Abuse of Legal Process, Fraud on Beneficiaries and Interested Parties and Fraud on the courts⁷ in attempts to convert the Policy(ies) proceeds to themselves, against the wishes and desires and beneficiary designations made by SIMON prior to his death.

COUNT I

FRAUD

⁷ Rule 11 of the Federal Rules of Civil Procedure prohibits the filing of lawsuits that are clearly frivolous or filed simply to harass someone. If the Court determines that you have filed a lawsuit for an improper or unnecessary reason, it may impose sanctions against you, including ordering you to pay any legal fees of the party that you sued.

FRAUD ON BENEFICIARIES, JACKSON, HERITAGE AND COURTS

129. That this is an action for Fraud within the jurisdiction of this Court. This is also a supplemental action for other civil claims of Fraud pursuant to the state laws of Illinois and Federal law.

130. That Cross Plaintiff, ELIOT, repeats and realleges each and every allegation contained in paragraph "1" through "129", as though fully set forth herein.

131. That Cross Defendants and Third Party Defendants filed this case without the knowledge and information of ELIOT, certain beneficiaries and interested parties of the estate of SIMON, with the intention allegedly to fraudulently convert ELIOT and other beneficiaries Policy(ies) proceeds.

132. That Cross Defendant and Third Party Defendants created a post mortem trust, assigning new post mortem beneficiaries or other unverifiable beneficiaries, allegedly fraudulently, to make illegal gains from the Policy(ies).

133. That the Cross Defendant and Third Party Defendants committed fraud on Cross Petitioner, ELIOT, by participating in fraud to deprive the beneficial rights of Cross Petitioner, his children, even their own adult and minor children and other rightful beneficiaries of the Policy(ies).

134. That as a direct and proximate result of such conduct on the part of Cross Defendant and Third Party Defendants, Cross Plaintiff, ELIOT, has been damaged by the alleged fraud and more committed by the conspiratorial actions of Cross Defendant and Third Party Defendants.

135. That this alleged Fraud was committed through an alleged Fraudulent legal proceeding before this Court, constituting not only an alleged Abuse of Process but an alleged Insurance Fraud and this should make this Court take Judicial Notice of the alleged crimes herein and in Petitions 1-7 and take immediate actions to notify all authorities, state and federal, of these alleged crimes, on its own motions.
136. That as a result of the acts of Cross Defendant and Third Party Defendants, Cross Plaintiff now suffers from delays in distribution of the Policy(ies) proceeds to the true and proper beneficiaries and he and his family will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

COUNT II

BREACH OF FIDUCIARY & PROFESSIONAL DUTIES AS TRUSTEES, LEGAL COUNSEL & PERSONAL REPRESENTATIVES OF ESTATE OF SIMON

137. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "136", as though fully set forth herein.
138. That this is a supplemental action for breach of fiduciary duties and professional responsibilities by Cross Defendant and Third Party Defendants, the law firm TSPA and Attorneys at Law, TESCHER and SPALLINA, acting as TED's Personal Counsel in this Lawsuit, as SIMON's estate counsel and tax attorney and as Personal Representatives of the SIMON estate, as per the state laws of Illinois and Federal law.

139. That this is a supplemental action for breach of fiduciary duties and professional responsibilities by Cross Defendant and Third Party Defendants, the law firm SLF and Attorneys at Law, D. SIMON and A. SIMON as counsel in this Lawsuit in conflict and representing TED as Trustee of the Bernstein Trust as per the state laws of Illinois and Federal law.
140. That this is a supplemental action for breach of fiduciary duties and professional responsibilities by Cross Defendant and Third Party Defendants per the state laws of Illinois and Federal law.
141. That the Cross Defendant and Third Party Defendants have conspired and filed this case breaching their fiduciary and professional duties to defraud the Cross Plaintiff, ELIOT, and take away his and others rights to the benefits of the Policy(ies).
142. That Cross Plaintiff alleges through the conspiratorial actions of Cross Defendant and certain Third Party Defendants, through Abuse of Legal Process, Fraud on this Court, Violations of State and Federal Law, Breaches of Fiduciary Duties and Violations of Attorney Conduct Codes attempted to perpetrate an insurance fraud and more to defraud Cross Plaintiff.
143. As a result of Cross Defendant and Third Party Defendants acts, Cross Plaintiff now suffers and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00), as well as, punitive damages, costs and attorney's fees.

COUNT III

LEGAL MALPRACTICE

144. That Cross Plaintiff, ELIOT, repeats and realleges each and every allegation contained in paragraph "1" through "143", as though fully set forth herein.
145. That this is a supplemental action for other civil claims for legal malpractice by Cross Defendant and Third Party Defendants, TSPA, TESCHER, SPALLINA, SLF, D. SIMON and A. SIMON pursuant to the state laws of Illinois and Federal law.
146. That the conspiratorial actions of the Third Party Defendants that are licensed to practice law and acted as Attorneys at Law or law firms in bringing this suit, whether withdrawn or admitted, or any other Attorney at Law that aided and abetted this alleged insurance fraud scheme and more in any way, have through the alleged crimes claimed already herein caused liabilities to Cross Plaintiff and others.
147. That as a result of the defendants acts, Cross Plaintiff now suffers and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

COUNT IV

ABUSE OF LEGAL PROCESS

148. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "147", as though fully set forth herein.


Answer to Cross Claim

149. That this is a supplemental action for other civil claims for abuse of legal process by Cross Defendant and Third Party Defendants pursuant to the state laws of Illinois and Federal law.
150. That Cross Defendant and Third Party Defendants have abused legal process to defraud Cross Plaintiff by misleading this court and others and filing this case without knowledge of Cross Plaintiff and against the advice of counsel and with knowledge of a different beneficiary designation than that they filed a death benefit claim for.
151. That as a result of the Cross Defendant and Third Party Defendants acts to Abuse Legal Process in order to perpetrate an alleged insurance fraud, Cross Plaintiff now suffer and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

COUNT V

CIVIL CONSPIRACY

152. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "151", as though fully set forth herein.
153. That this is a supplemental action for other civil claims for civil conspiracy by Cross Defendant and Third Party Defendants pursuant to the state laws of Illinois and Federal law.
154. That Cross Defendant and Third Party Defendants have conspired together to defraud Cross Plaintiff by misleading this court and others regarding the beneficiary(ies) of the Policy(ies) , who they knew had direct beneficial interests in the Policy(ies)and filing this case without

knowledge of Cross Plaintiff and his children's counsel in attempts to convert the Policy(ies) Proceeds.

155. That as a result of the defendants' acts, Cross Plaintiff now suffers and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

COUNT VI

CONVERSION OF PROPERTY

156. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "155", as though fully set forth herein.

157. That this is a supplemental action for Conversion of Property by Cross Defendant and Third Party Defendants pursuant to the state laws of Illinois and Federal law.

158. That Cross Defendant and Third Party Defendants have conspired together to deprive Cross Plaintiff of his right to Estate as a beneficiary by their fraudulent acts ad creating false documents.

159. That as a result of the defendants' acts, Cross Plaintiff now suffers and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

COUNT VII

NEGLIGENCE

160. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "159", as though fully set forth herein.

161. At all times relevant herein, the Cross Defendant and Third Party Defendants, acting as trustees and representatives of Trusts and Insurance policies, had a duty to exercise reasonable care and skill to maintain the estate and to discharge and fulfill the other incidents attendant to the maintenance, accounting and servicing of the state on behalf of SIMON and the beneficiaries.

162. In taking the actions alleged above, and in failing to take the actions as alleged above, the Cross Defendant and Third Party Defendants breached their duty of care and skill towards maintenance of the estate. Cross Defendant and Third Party Defendants have mismanaged the estate of SIMON and fraudulently created documents and allegedly forged them without having the legal authority and/or proper documentation to do so.

163. As a direct and proximate result of the negligence and carelessness of the Cross Defendant and Third Party Defendants as set forth above, Cross Plaintiff suffered general and special damages in an amount to be determined by this Court or at trial.

RELIEF

WHEREFORE, Cross Plaintiff ELIOT prays to this Court:

- i. To seize all records and demand that all records of all parties concerning either SHIRLEY or SIMON held by all parties be turned over to ELIOT, as NO documents have been tendered to him regarding these Policies;

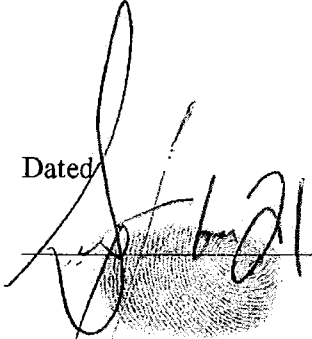
- ii. Award Court Costs not from the Policy(ies) but from alleged conspirators and force bonding for these unnecessary legal and other costs by those parties that have caused this baseless Lawsuit in efforts to perpetrate a fraud;
- iii. ELIOT has requested the Probate Court to remove TSPA, SPALLINA, TESCHER, TED and P. SIMON of any fiduciary capacities regarding the estates of SIMON and SHIRLEY on multiple legal grounds stated in said Petitions and Motion 1-7 and hereby requests this Court remove them as well from acting in any conflicting capacities or self-representations based on the Prima Facie evidence of Forgery, Fraud, Fraud on the Probate Court and Mail and Wire Fraud, already evidenced in Petition 7. **That in hearings held on SHIRLEY's estate on Friday, September 13, 2013 in the Probate Court, Honorable Judge Martin H. Colin told TED, SPALLINA, TESCHER and their counsel, Mark Manceri, that he [Hon. Judge Colin] should read them all their Miranda Rights right at that moment, after hearing how SIMON had notarized documents to close SHIRLEY's estate two months after he was deceased and how there was a fraud upon his court and himself personally as he closed the estate with the fraudulent documents and TSPA, TESCHER and SPALLINA did not think it important to note the Court of what they were doing. Hon. Colin's issued this stark Miranda Warning after hearing the criminal misconduct admitted to in his Court, twice in fact.**
- iv. That the alleged insurance fraud taking place through the instant Lawsuit in this Court is allegedly being committed by similar parties of the alleged estate frauds, again misusing their fiduciary and professional powers and they should be removed from



further representing any parties, sanctioned and forced to retain non conflicted counsel further in these proceedings.

- v. ELIOT requests this Court take Judicial Notice of the alleged and admitted crimes herein and in Petitions 1-7 and act on its own motions to prevent any further possible criminal activities and damages to others being incurred until these alleged criminal matters are fully resolved.
- vi. Allow ELIOT to ECF in this case due to health problems and expenses. In US District Court Scheindlin has ordered ELIOT access to ECF filing.
- vii. Allow leave to amend this Cross Claim as it was served while ELIOT was recovering from a traumatic brain injury with bleeding on the brain, a fractured rib and bruised collar bone and in ICU for 3 days in Del Ray Beach, FL hospital and the recovery was almost two months during the time for response and therefore ELIOT would like an opportunity to perfect it. The Court granted several extensions and ELIOT thanks Your Honor for the additional extensions in light of this medical incident.
- viii. Award damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

Dated


_____ 2013

Respectfully submitted,


/s/ Eliot I. Bernstein

Eliot I. Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
(561) 245-8588



Case 1:13-cv-03643-117
Answer & Cross Claim

Certificate of Service

The undersigned certifies that a copy of the foregoing Answer and Cross Claim was served by ECF, US Mail and by E-mail on September 21, 2013 to the following parties:

US Mail and Email

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Donald Tescher, Esq. and
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dtescher@tescherspallina.com

Theodore Stuart Bernstein and
National Service Association, Inc. (of Florida) ("NSA")
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Lisa Sue Friedstein
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Lisa@friedsteins.com
lisa.friedstein@gmail.com

Jill Marla Iantoni
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Highland Park, IL 60035
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Iantoni_jill@ne.bah.com

Pamela Beth Simon and
S.T.P. Enterprises,

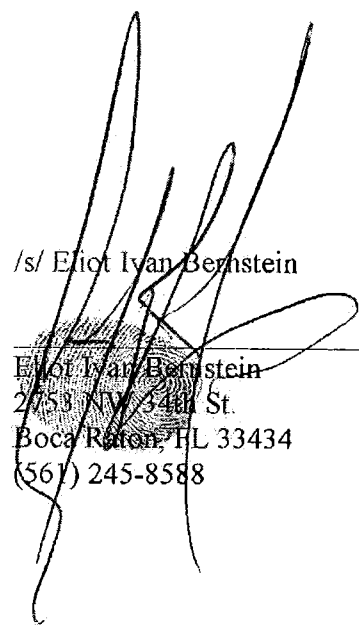

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Answer & Cross Claim

S.B. Lexington, Inc. Employee Death Benefit Trust,
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National Service Association, Inc. (of Illinois)
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David B. Simon and
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Adam Simon and
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/s/ Eliot Ivan Bernstein



Eliot Ivan Bernstein
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Boca Raton, FL 33434
(561) 245-8588

EXHIBIT 10

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of his minor children D.B., Ja. B. and Jo. B.;
JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;
LISA FRIEDSTEIN, Individually, as Trustee f/b/o
Max Friedstein and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her
minor child, C.F.,

COPY

Defendants.

FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT

This cause came before the Court for trial on December 15, 2015, pursuant to the Court's
ORDER SETTING TRIAL on AMENDED COMPLAINT (DE 26) COUNT II dated September 24,
2015. The Court, having received evidence in the form of documents and testimony of witnesses,

having heard argument of counsel and *pro se* parties who wished to argue, and being otherwise fully advised of the premises, hereby enters a Final Judgment as to Count II of the Amended Complaint:

1. This is an action for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- A. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached to the Amended Complaint as Exhibit ~~A~~, *EX. P2 AT TRIAL*) *JB*
- B. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", attached to the Amended Complaint as Exhibit ~~B~~, *EX. P3 AT TRIAL*) *JB*
- C. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", attached to the Amended Complaint as Exhibit ~~C~~, *EX. P4 AT TRIAL*) *JB*
- D. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", attached to the Amended Complaint as Exhibit ~~D~~, *EX. P5 AT TRIAL*), *and* *JB*
- E. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", attached to the Amended Complaint as Exhibit ~~E~~, *EX. P1 AT TRIAL*) *JB*

(collectively, the "Testamentary Documents").

2. Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, and are valid and enforceable according to their terms.

3. The Court finds that Simon's Testamentary Documents were signed by Simon and Shirley's Testamentary Documents were signed by Shirley, in the presence of two attesting witnesses who signed in the presence of the testator and in the presence of each other. § 732.502, Fla. Stat.; § 736.0403(2)(b), Fla. Stat.

4. The Court finds the Testamentary Documents meet the requirements for self-proof, as specified in §732.503, Fla. Stat. Alternatively, the Testamentary Documents were properly admitted based upon the testimony of at least one of the attesting witnesses, which occurred. §733.201, Fla. Stat.

5. Based on the evidence presented, the Court finds that Plaintiff, Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents. ~~Indeed,~~ Ted S. Bernstein had never seen the documents before his father's death. ~~Moreover,~~ Ted S. Bernstein played no role in any questioned activities of the law firm Tescher & Spallina, PA, who represented Simon and Shirley while they were alive. There is no evidence to support the assertions that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided and abetted others in forging or fabricating documents. ~~Thus,~~ Ted Bernstein played no role in the preparation of any improper documents; the presentation of any improper documents to the Court; or any other improper act, contrary to the allegations of Eliot Bernstein, ~~made in the pleadings in this case or in various blogs and websites in which Eliot Bernstein has attacked the actions of Ted Bernstein.~~

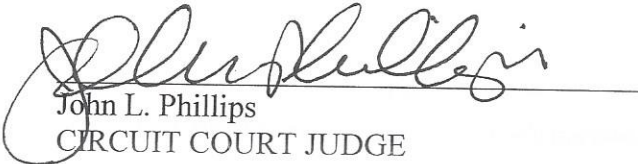
Handwritten initials and notes: "jw", "jw", "of ELIOT BERNSTEIN", "The evidence shows", "jw", "jw", "jw".

6. Based on the evidence presented, the Court finds that an unauthorized version of the First Amendment to Shirley Bernstein Trust Agreement was prepared sometime after Simon died. This document (Pl. Ex. 6) was not signed by Shirley Bernstein and, therefore, is not an operative document.

7. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure, determining the validity of Testamentary Documents, denying any objection to the probate of Shirley's and Simon's Wills or the validity of the Trust Agreements, and determining which persons are entitled to receive distributions from these trusts and estates.

8. Based upon the rulings made by the Court in this trial of Count II, the Court reserves jurisdiction to determine the remaining issues in this action.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 16 day of December, 2015.


John L. Phillips
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
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Eric Bernstein, Michael Bernstein

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children, and as natural guardian for M.F. and
C.F., Minors; and Max Friedstein
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Jill Iantoni, individually and as trustee for her
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EXHIBIT 11

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: CASE NO. 502012CP004391XXXXNBIH
ESTATE OF SIMON L. BERNSTEIN,

**ORDER APPOINTING GUARDIAN AD LITEM TO
REPRESENT THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN**

THIS CAUSE came before the Court for hearing on April 8, 2016, on Successor Trustee's *Motion for Appointment of a Guardian Ad Litem to Represent Interests of Eliot Bernstein's Children in this Estate* ("the Motion"). The Court, having reviewed the Motion and the record, having heard argument of counsel and/or the parties, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Simon L. Bernstein Amended and Restated Trust Agreement dated 7/25/12 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust.
2. The Court already has determined in the related matter of the Shirley Bernstein Trust that Eliot Bernstein should not be permitted to continue representing the interests of his minor children, because his actions have been adverse and destructive to his children's interest, resulting in appointment of a guardian ad litem.
3. Accordingly, the Court appoints DIANA LEWIS to act as Guardian ad Litem to advance and protect the interests of Jo.B, Ja.B and D.B. as the guardian sees fit. The Guardian Ad Litem will have full power and autonomy to represent the interests of the

children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B, Jo.B, and/or D.B.

4. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the Guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

5. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE AND ORDERED in Chambers, North County Courthouse on 4-8, 2016.


HONORABLE JOHN L. PHILLIPS

cc: All parties on the attached service list

SERVICE LIST Case No.: 502012CP004391XXXXNBIH

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and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
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Eric Bernstein, Michael Bernstein

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as natural guardian for M.F. and C.F., Minors

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EXHIBIT 12

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Counter-Plaintiff,)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK,)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
successor in interest to "LaSalle National)
Trust, N.A., TED BERSTEIN, individually)
and as alleged Trustee of the Simon)
Bernstein Irrevocable Insurance Trust Dtd.)
6/21/95 and ELIOT BERNSTEIN,)

Third Party Defendants)

Case No. 13 cv 3643

Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

INTERVENOR COMPLAINT FOR
DECLARATORY JUDGMENT BY
INTERESTED PARTY BENJAMIN P.
BROWN, CURATOR AND
ADMINISTRATOR AD LITEM OF
THE ESTATE OF SIMON L.
BERNSTEIN

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and as)
alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd. 6/21/95)

Cross-Defendant)

and)

PAMELA B. SIMON, DAVID B. SIMON)
both Professionally and Personally, ADAM)
SIMON both Professionally and Personally,)
THE SIMON LAW FIRM, TESCHER &)
SPALLINA, P.A., DONALD TESCHER)
both Professionally and Personally,)
ROBERT SPALLINA both Professionally)
and Personally, LISA FRIEDSTEIN, JILL)
IANTONI, S.B. LEXINGTON, INC.,)
EMPLOYEE DEATH BENEFIT TRUST,)
S.T.P ENTERPRISES, INC., S.B.)
LEXINGTON, INC., EMPLOYEE DEATH)
BENEFIT TRUST, S.T.P. ENTERPRISES,)
INC., S.B. LEXINGTON, INC.,)
NATIONAL SERVICE ASSOCIATION,)
INC. (OF FLORIDA) NATIONAL)
SERVICE ASSOCIATION, INC,)
(OF ILLINOIS) AND JOHN AND)
JANE DOE'S)

Third Party Defendants)

BENJAMIN P. BROWN, as Curator and)
Administrator Ad Litem of the Estate of)
Simon L. Bernstein,)

Intervenor.)

**INTERVENOR COMPLAINT FOR DECLARATORY JUDGMENT BY INTERESTED
PARTY BENJAMIN P. BROWN, CURATOR AND ADMINISTRATOR AD LITEM OF
THE ESTATE OF SIMON L. BERNSTEIN**

NOW COMES Benjamin P. Brown, as Curator and *Administrator Ad Litem* of the Estate of Simon L. Bernstein (“Brown”), by and through his undersigned counsel, and states as follows for his Complaint for Declaratory Judgment pursuant to Fed. R. Civ. P. 57 against the purported Simon Bernstein Irrevocable Trust DTD 6/21/95 (the “Trust”) and Heritage Union Life Insurance Company:

INTRODUCTION

1. This declaratory judgment action is filed pursuant to Fed. R. Civ. P. 57 and seeks a declaration that there exists no designated beneficiary of the life insurance policy proceeds at issue in the instant action and that the proceeds of the policy must be paid to the Estate of Simon Bernstein, currently pending in the Circuit Court of Palm Beach County, Florida.

PARTIES AND JURISDICTION

2. Benjamin P. Brown is an Intervening Party pursuant to Fed. R. Civ. P. 24 and is a resident of Palm Beach County, Florida.

3. The purported Simon Bernstein Irrevocable Insurance Trust is alleged in Plaintiff’s original Complaint to have been established in Chicago, Illinois.

4. Heritage Union Life Insurance Company, a Minnesota corporation, is the successor corporation to the insurer that issued the life insurance policy (the “Policy”) at issue in the instant litigation.

5. The death benefit payable under the Policy exceeds \$1 million dollars.

6. This Court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. §1332(a).

BACKGROUND

7. Simon L. Bernstein, a resident of Florida, died in September of 2012. His estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Letters of Curatorship in favor of Benjamin Brown were issued on March 11, 2014. (A copy of the Letters of Curatorship filed in the Probate Court is attached hereto as Exhibit A).

8. At the time of Simon Bernstein's death, there was in effect a life insurance policy issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy"). The Policy's current proceeds are \$1,689,070.00, less an outstanding loan. (See Dkt. No. 17 at ¶17).

9. After Mr. Bernstein's death, several of his children filed a Complaint in the Circuit Court of Cook County claiming a right to the proceeds of the Policy as alleged beneficiaries under a purported trust they describe as the "Simon Bernstein Irrevocable Insurance Trust" (the "Trust"). The Bernstein children acknowledge that they have been unable to produce an executed Trust document under which they assert their rights. (See letter of Third Party Defendant Robert Spallina, Esq. to Defendant Heritage Union Life Insurance Company, attached as Exhibit B).

10. Defendant, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company, removed the case to this Court on June 26, 2013 and filed an Interpleader action pursuant to 28 U.S.C. § 1335(a), in conjunction with its Answer to Plaintiff's Complaint. (See Dkt. No. 17). In its Complaint for Interpleader, Heritage asserts the following:

"Presently the Bernstein Trust has not been located. Accordingly [Defendant] is not aware whether the Bernstein Trust even exists, and if it does whether its title is the "Simon Bernstein Trust, N.A.," as listed as the Policy's contingent beneficiary (or otherwise), and/or if Ted Bernstein is in fact its trustee. In conjunction, [Defendant] has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust."

(Dkt. No. 17 at ¶20).

11. On May 23, 2014, Mr. Brown was appointed *Administrator Ad Litem* to act on behalf of the Estate of Simon L. Bernstein (the "Estate") and, more specifically, directed by the Probate Court in Palm Beach County "to assert the interests of the Estate in the Illinois Litigation involving life insurance proceeds on the Decedent's life." (A copy of the Order Appointing Administrator Ad Litem is attached hereto as Exhibit C).

12. Plaintiff cannot prove the existence of a Trust document; cannot prove that a trust was ever created; thus, cannot prove the existence of the Trust nor its status as purported beneficiary of the Policy. In the absence of a valid Trust and designated beneficiary, the Policy proceeds are payable to Petitioner, the Estate of Simon Bernstein, as a matter of both Illinois and Florida law. *See New York Life Ins. Co. v. RAK*, 180 N.E. 2d 470 (Ill. 1962) (where beneficiary no longer existed, proceeds of life insurance policy passed to the decedent's estate); *Harris v. Byard*, 501 So.2d 730 (Fla. Dist. Ct. App. 1987) (in the absence of a named beneficiary, no basis in law for directing payment of insurance policy proceeds to anyone other than decedent's estate for administration and distribution).

13. Intervenor Benjamin P. Brown seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to the Estate.

WHEREFORE, Intervenor, Benjamin P. Brown, as Curator and *Administrator Ad Litem* on behalf of the Estate of Simon L. Bernstein, requests this Court to enter judgment as follows:

- A. Declare that there is no valid beneficiary designated under the Policy;
- B. Declare that the proceeds of the Policy are payable to the Estate of Simon Bernstein;

C. For Intervenor's costs and expenses incurred herein, including reasonable attorneys' fees, and such other and further relief as this Court deems just and proper.

Dated: June 5, 2014

Respectfully submitted,

/s/ James J. Stamos

One of the attorneys for Proposed Intervenor,
Benjamin P. Brown, Curator and Administrator Ad
Litem on behalf of the Estate of Simon L. Bernstein

James J. Stamos (ARDC 03128244)
Kevin P. Horan (ARDC 06310581)
STAMOS & TRUCCO LLP
One East Wacker Drive, Third Floor
Chicago, IL 60601
Telephone: (312) 630-7979
Facsimile: (312) 630-1183

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 5, 2014, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIV.
CASE NO.: 50 2012 CP 004391 XXXX SB

IN RE: ESTATE OF SIMON L. BERNSTEIN,
Deceased.

LETTERS OF CURATORSHIP IN FAVOR OF BENJAMIN BROWN

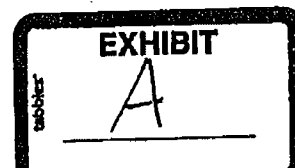
WHEREAS, Co-Personal Representatives of the Estate of Simon L. Bernstein were permitted to resign by Order of this Court on February 18, 2014. A copy of the Order is attached hereto as Exhibit "A"; and

WHEREAS, this Court found it necessary for the appointment of a Curator and appointed Benjamin Brown, Esq. as Curator of this Estate on February 25, 2014. A copy of the Order is attached hereto as Exhibit "B"; and

WHEREAS Benjamin Brown as Curator appointed by Order of this Court has performed all acts prerequisite to the issuance of Letters of Curatorship as a legally qualified Curator of the Estate of Simon L. Bernstein;

NOW, THEREFORE, I the undersigned Circuit Judge do grant Benjamin Brown (hereinafter Curator), the Curatorship of the Estate of Simon L. Bernstein with the following powers:

- (a) To collect and preserve assets of the Estate;
- (b) To administer the assets of the Estate;
- (c) To evaluate all discovery requests related to the Decedent for the purposes of asserting objections and privileges on behalf of the Estate, if necessary;
- (d) To appear on behalf of the Estate in the following two cases: Case No. 502012CA013933 (Circuit Court, Palm Beach County, FL) and Case No. 13CV3643 (U.S. Dist. Ct. Northern Dist.,



Illinois),

Further, pursuant to Fla. Stat. §733.603, Curator shall proceed expeditiously with the duties described herein and except as otherwise specified by the Florida Probate Code, or ordered by the Court, shall do so without adjudication, Order or direction of the Court. The Curator may invoke the jurisdiction of this Court to resolve questions concerning the Estate or its administration.

DONE AND ORDERED in Chambers at Delray Beach, Palm Beach County, Florida,
this _____ day of March, 2014.

SIGNED & DATED

Martin Colin, Circuit Judge

JUDGE MARTIN H. COLIN

Copies furnished to:

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John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com;

Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@feamanlaw.com;

Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv;

William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com.

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SIMON L. BERNSTEIN,

PROBATE DIVISION

Deceased.

CASE NO. 502012CP004391XXXXSB

ELIOT IVAN BERNSTEIN, PRO SE

DIVISION: IX (COLIN)

Petitioner

vs.

TESCHER & SPALLINA, P.A., (and all parties, associates and of counsel); ROBERT L. SPALLINA (both personally and professionally); DONALD R. TESCHER (both personally and professionally); THEODORE STUART BERNSTEIN (as alleged personal representative, trustee, successor trustee) (both personally and professionally); et. al.

Respondents.

ORDER ON PETITION FOR RESIGNATION AND DISCHARGE

This cause was heard by the Court on the co-Personal Representatives' Petition for Resignation and Discharge on February 18, 2014, and the Court, having heard arguments of counsel, and otherwise being fully advised in the premises, ORDERS AND ADJUDGES AS FOLLOWS:

1. The Petitioners' request to accept their resignation is ACCEPTED. The co-Personal Representatives' Letters of Administration are hereby revoked.

2. ~~Whereas the co-Personal Representatives~~ ^{BY MARCH 4, 2014} ~~from the later of the date of this order or the appointment of a successor fiduciary,~~ ^(initials) the resigning co-Personal Representatives shall deliver to the successor fiduciary all property of the Estate, real, personal, tangible or intangible, all of the documents and records of the Estate and all records associated with any property of the Estate, regardless of whether such property has been previously distributed, transferred, abandoned or otherwise disposed of.

3. The Petitioners' request to reserve ruling on their discharge is ACCEPTED.

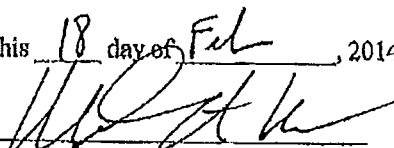
4. The resigning co-Personal Representatives shall file an accounting and a Renewed Petition for Discharge within sixty (60) days after the date hereof, which Renewed Petition for Discharge shall be verified and recite that the letters of administration have been revoked, the resigning co-Personal Representatives have surrendered all undistributed Estate assets, records, documents, papers and other property of or concerning the Estate to the successor fiduciary as set forth above, and the amount of compensation paid or to be paid by the resigning co-Personal Representatives pursuant to Probate Rule 5.430(g). Such accounting shall include cash and transactions from the commencement of administration of the Estate and ending as of the date the accounting is submitted.

5. The resigning co-Personal Representatives shall serve notice of filing and a copy of the accounting and Renewed Petition for Discharge on all interested parties and the notice shall state that the objection to the Renewed Petition for Discharge must be filed within thirty days after the later of service of the petition or service of the accounting on that interested person pursuant to Probate Rule 5.430(i).

6. The successor Personal Representative or Curator is authorized to pay a \$ _____ retainer to the accountant whom the Successor Personal Representative or Curator selects to provided the accounting which this Order requires. The accountant's hourly rate and compensation shall be subject to court approval.

WAK
"THE COURT RESERVES THE RIGHT TO ENFORCE THIS ORDER."

DONE AND ORDERED in Delray Beach, Florida, this 18 day of Feb, 2014.


Circuit Judge

cc: Parties on attached service list

SERVICE LIST

Theodore Stuart Bernstein (e-mail)
Life Insurance Concepts
950 Peninsula Corporate Circle, Suite 3010
Boca Raton, Florida 33487

Alan B. Rose, Esq. (E-mail)
Page Mrachek Fitzgerald Rose Konopka &
Dow PA
505 S Flagler Dr Ste 600
West Palm Beach, Florida 33401

Eliot Bernstein (U.S. Mail)
2753 NW 34th Street
Boca Raton, Florida 33434

Lisa Sue Friedstein (U.S. Mail)
2142 Churchill Lane
Highland Park, Illinois 60035

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4855 Technology Way, Suite 720
Boca Raton, Florida 33431

Mark R. Manceri, Esq. (E-mail)
Mark. R. Manceri, P.A.
2929 East Commercial Boulevard, Ste. 702
Fort Lauderdale, Florida 33308

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIV.

CASE NO.: 50 2012 CP 004391 XXXX SB

IN RE: ESTATE OF SIMON L. BERNSTEIN,
Deceased.

**ORDER ON "INTERESTED PERSON" WILLIAM STANSBURY'S
MOTION FOR THE APPOINTMENT OF A CURATOR
OR SUCCESSOR PERSONAL REPRESENTATIVE**

THIS CAUSE came on to be heard by this Honorable Court on Wednesday, February 19, 2014, on the Motion of William Stansbury, as an "Interested Person" in the Estate, For the Appointment of a Curator or Successor Personal Representative, and the Court having received evidence, reviewed the file, heard argument of counsel, and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED:

1. The Motion of William Stansbury is hereby granted.
2. The Court hereby appoints Benjamin Brown, Esq., Matwiczuk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401 as Curator of this Estate pursuant to §733.501 Fla. Stat. (2013) and Florida Probate Rule 5.122(a).
3. Reasonable fees for the Curator are capped at \$350.00 per hour.

EXHIBIT "B"

2/25/14

4. Fee payments will be made in \$5,000.00 increments. Any fee requests in excess of that amount for any given period will require a court hearing.

5. In accordance with §733.501(2) Fla. Stat. (2013), bond is hereby set in the amount of \$ none.

DONE and ORDERED in West Palm Beach, Palm Beach County, Florida on this ___ day of February, 2014.

SIGNED & DATED
MARTIN COLIN
Circuit Court Judge

FEB 25 2014

JUDGE MARTIN H. COLIN

Copies to:

Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com;

John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com;

Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@feamanlaw.com;

Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv;

William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com.

LAW OFFICES

TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER I
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FLORIDA 33431

ATTORNEYS
DONALD R. TESCHER
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SUPPORT STAFF
DIANE DUSTIN
KIMBERLY MORAN
SUANN TESCHER

December 6, 2012

VIA FACSIMILE: 803-333-4936

Attn: Bree
Claims Department
Heritage Union Life Insurance Company
1275 Sandusky Road
Jacksonville, IL 62651

Re: Insured: Simon L. Bernstein
Contract No.: 1009208

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

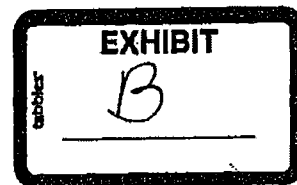
If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

Robert L. Spallina/km
ROBERT L. SPALLINA

RLS/km

Enclosures





FROM: Peter M. Feaman P.A, 7345654 TO: 2741418 05/23/2014 10:43:41 #17697 P.003/006

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE:

CASE NO.: 50 2012 CP 004391 XXXX SB
PROBATE DIV.

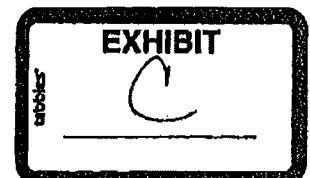
ESTATE OF SIMON L. BERNSTEIN,
Deceased.

**ORDER APPOINTING ADMINISTRATOR AD LITEM TO
ACT ON BEHALF OF THE ESTATE OF SIMON L. BERNSTEIN
TO ASSERT THE INTERESTS OF THE ESTATE IN THE ILLINOIS
LITIGATION (CASE NO. 13CV3643, N.D. ILL. E. DIV.) INVOLVING
LIFE INSURANCE PROCEEDS ON THE DECEDENT'S LIFE**

THIS CAUSE came before this Honorable Court on May 23, 2014 upon the Curator's Amended Motion for Instructions/Determination regarding Estate Entitlement to Life Insurance Proceeds and upon the Petition for Appointment of Administrator Ad Litem filed by William Stansbury, in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, currently pending in the United States District Court for the Northern District Court of Illinois, and the Court having heard argument of counsel and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED that

I. The Court appoints Benjamin P. Brown, Esq., who is currently serving as Curator, as the Administrator Ad Litem on behalf of the Estate of Simon L. Bernstein to assert the interests of the Estate in the Illinois Litigation involving life insurance proceeds on the Decedent's life in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, pending in the United States District Court for the Northern District Court of Illinois.




11/05/14 10:44:01 #17887 P.004/008

2. For the reasons and subject to the conditions stated on the record during the hearing, all fees and costs incurred, including for the Curator in connection with his work as Administrator Ad Litem and any counsel retained by the Administrator Ad Litem, will initially be borne by William Stansbury.

3. The Court will consider any subsequent Petition for Fees and Costs by William Stansbury as appropriate under Florida law.

DONE AND ORDERED in Palm Beach County, Florida this 23 day of May, 2014.


MARTIN COLIN
Circuit Court Judge

- Copies to:
- Alon Rose, Esq., PAGE, MRACHIEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com
 - John Pankowski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, john@pankowskilawfirm.com
 - Peter M. Forman, Esq., PETER M. FBAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@pformanlaw.com
 - Elliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, elliott@elliottllp.com
 - William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com
 - John P. Morrissey, Esq., 330 Clematis St., Suite 213, West Palm Beach, FL 33401, john@jpmorrisseylaw.com
 - Benjamin P. Brown, Esq., Matwiczok & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, bbrown@matwiczoklaw.com

EXHIBIT 13

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

Case No. 13 cv 3643

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

Defendant.)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Counter-Plaintiff,)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Counter-Defendant,)

and,)

FIRST ARLINGTON NATIONAL BANK,)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon)
Bernstein Irrevocable Insurance Trust Dtd.)
6/21/95, and ELIOT BERNSTEIN,)

Third-Party Defendants.)

**JACKSON'S (1) ANSWER TO COMPLAINT AND (2) COUNTERCLAIM
AND THIRD-PARTY COMPLAINT FOR INTERPLEADER**

Defendant, Jackson National Life Insurance Company ("Jackson"), as successor in
interest to Reassure America Life Insurance Company, successor in interest to Heritage Union

Life Insurance Company, makes the following (1) answer to Plaintiff's complaint and (2) counterclaim and third-party complaint for interpleader:

ANSWER

1. At all relevant times, the Bernstein Trust was a common law trust established in Chicago, Illinois by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the State of Illinois.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

2. Ted S. Bernstein is the Trustee of the Bernstein Trust.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

3. At all relevant times, the Bernstein Trust was a beneficiary of a life insurance policy insuring the life of Simon L. Bernstein, and issued as policy number 1009208 (the "Policy").

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

4. The Policy was originally purchased by the S.B. Lexington, Inc. 501(c)(9) VEBA Trust (the "VEBA") from Capital Bankers Life Insurance Company ("CBLIC") and was delivered to the original owner in Chicago, Illinois on or about December 27, 1982.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

5. At the time of issuance and delivery of the Policy in 1982, CBLIC was an insurance company licensed and doing business in the State of Illinois, and the insured, Simon L. Bernstein, was a resident of the state of Illinois.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

6. Heritage subsequently assumed the Policy from Capital Bankers and thus became the successor to CBLIC as "Insurer" under the Policy.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

7. In 1995, the VEBA, as owner of the Policy, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee of the VEBA, as primary beneficiary of the Policy, and the Bernstein Trust as the contingent beneficiary.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

8. S.B. Lexington, Inc. and the VEBA were voluntarily dissolved on or about April 3, 1998.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

9. Upon the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon L. Bernstein, individually.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

10. At the time of his death, Simon L. Bernstein was the owner of the Policy, and the Bernstein Trust was the sole surviving beneficiary under the Policy.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

11. The insured under the Policy, Simon L. Bernstein, passed away on September 13, 2012, and on that date the Policy remained in force.

ANSWER: Jackson admits the allegation of this paragraph.

12. Following Simon L. Bernstein's death, the Bernstein Trust, by and through its counsel in Palm Beach County, FL, submitted a death claim to Heritage under the Policy including Simon L. Bernstein's death certificate and other documentation.

ANSWER: Jackson admits the allegation of this paragraph.

13. The Policy, by its terms, obligates Heritage to pay the death benefits to the beneficiary of the Policy upon Heritage's receipt of the due proof of the insured's death.

ANSWER: Jackson admits it, as a successor to Heritage, is obligated to pay the death benefits to the beneficiary(ies) of the Policy, but denies that the remainder of paragraph 13 accurately and fully states the obligations of a beneficiary in submitting a claim under the Policy, and/or when the obligation for Jackson to make such payment becomes due and therefore denies the same.

14. Heritage has breached its obligations under the Policy by refusing and failing to pay the Policy's death benefits to the Bernstein Trust as beneficiary of the Policy despite Heritage's receipt of due proof of the Insured's death.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the true beneficiary of the Policy, resulting in it tendering the death benefit funds to the Court and filing its interpleader counterclaim and third-party complaint, and thus it denies the allegation of this paragraph.

15. Despite the Bernstein Trust's demands Heritage has not paid out the death benefits on the policy to the Bernstein Trust.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the true beneficiary of the Policy, resulting in it tendering the death benefit funds to the Court and filing its interpleader counterclaim and third-party complaint, and thus it denies the allegation of this paragraph.

16. As a direct result of Heritage's refusal and failure to pay the death benefits to the Bernstein Trust pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds \$1,000,000.

ANSWER: Jackson denies the allegation of this paragraph.

WHEREFORE, Defendant, Jackson National Life Insurance Company, as successor in interest to Reassure America Life Insurance Company, successor in interest to Heritage Union Life Insurance Company, respectfully requests that it be dismissed from this lawsuit, and requests such other and further relief as the Court deems just and proper.

COUNTER-CLAIM AND THIRD-PARTY COMPLAINT FOR INTERPLEADER

INTRODUCTION

1. Jackson National Life Insurance Company ("Jackson") brings this counter-claim and third-party complaint for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14, as it seeks a declaration of rights under a life insurance policy for which it is responsible to administer. The proceeds from the policy (the "Death Benefit Proceeds") have been tendered to this Court.

PARTIES AND VENUE

2. Jackson, successor in interest to Reassure America Life Insurance Company ("Reassure"), successor in interest to Heritage Union Life Insurance Company ("Heritage"), is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business located in Lansing, Michigan. Jackson did not originate or administer the

subject life insurance policy, Policy Number 1009208 (the "Policy"), but inherited the Policy and the Policy records from its predecessors.

3. The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 (the "Bernstein Trust") is alleged in the underlying suit to be a "common law trust established in Chicago, Illinois by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the state of Illinois."

4. Ted S. Bernstein is a resident and citizen of Florida. He is alleged in the underlying suit to be the "trustee" of the Bernstein Trust. Ted Bernstein is further, individually, upon information and belief, a beneficiary of the Bernstein Trust (as Simon Bernstein's son).

5. Eliot Bernstein is a resident and citizen of Florida. He has asserted that he and/or his children are potential beneficiaries under the Policy as Simon Bernstein's son, presumably under the Bernstein Trust.

6. First Arlington National Bank is, upon information and belief, a bank in Illinois that was, at one point, and the purported trustee for the "S.B. Lexington, Inc. Employee Death Benefit Trust" (the "Lexington Trust"). The Lexington Trust was, upon information and belief, created to provide employee benefits to certain employees of S.B. Lexington, Inc., an insurance agency, including Simon Bernstein, but it is unclear if such trust was properly established.

7. United Bank of Illinois is, upon information and belief, a bank in Illinois that was, at one point, a named beneficiary of the Policy. To date, Jackson has not determined the current existence of this bank.

8. Bank of America, N.A., is a national banking association with its principal place of business in Charlotte, North Carolina. Bank of America, N.A. is the successor in interest to LaSalle National Trust, N.A., which was a named beneficiary of the Policy.

9. The "Simon Bernstein Trust" is, upon information and belief, the Bernstein Trust listed in paragraph 3, above, and was a named contingent beneficiary of the Policy. However, based on the variance in title, to the extent it is a separate trust from the Bernstein Trust referenced above, it is named separately.

10. Subject matter jurisdiction is proper in accordance with 28 U.S.C. § 1335(a).

11. Personal jurisdiction is proper over Ted Bernstein because he, purportedly as Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.

12. Personal jurisdiction is proper over First Arlington National Bank, United Bank of Illinois, and Bank of America in accordance with 735 ILCS 5/2-209(a)(1) because each, upon information and belief, transacts business in Illinois.

13. Personal jurisdiction is proper over Ted and Eliot Bernstein in accordance with 735 ILCS 5/2-209(a)(13) as each are believed to have an ownership interest in the Bernstein Trust, which is alleged in the underlying complaint to exist underneath laws of and to be administered within this State.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to this interpleader action occurred in this District.

FACTS

15. On December 27, 1982, upon information and belief, Capitol Bankers Life Insurance Company issued the Policy, with Simon L. Bernstein as the purported insured (the "Insured").

16. Over the years, the Policy's owner(s), beneficiary(ies), contingent beneficiary(ies) and issuer changed. Among the parties listed as Policy beneficiaries (either primary or contingent) include: "Simon Bernstein"; "First Arlington National Bank, as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust"; "United Bank of Illinois"; "LaSalle National

Trust, N.A., Trustee"; "LaSalle National Trust, N.A."; "Simon Bernstein Insurance Trust dated 6/21/1995, Trust"; and "Simon Bernstein Trust, N.A."

17. At the time of the Insured's death, it appears "LaSalle National Trust, N.A." was the named primary beneficiary of the Policy, and the "Simon Bernstein Trust, N.A." was the contingent beneficiary of the Policy. The Policy's Death Benefit Proceeds are \$1,689,070.00, less an outstanding loan.

18. Subsequent to the Insured's death, Ted Bernstein, through his Florida counsel (who later claimed Bernstein did not have authority to file the instant suit in Illinois on behalf of the Bernstein Trust and withdrew representation), submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, purportedly as the trustee of the Bernstein Trust. Ted Bernstein claimed that the Lexington Trust was voluntarily dissolved in 1998, leaving the Bernstein Trust as the purported sole surviving Policy beneficiary at the time of the Decedent's death.

19. However, Ted Bernstein could not locate (nor could anyone else) a copy of the Bernstein Trust. Accordingly, on January 8, 2013, Reassure, successor to Heritage, responded to Ted Bernstein's counsel stating:

In as much as the above policy provides a large death benefit in excess of \$1.6 million dollars and the fact that the trust document cannot be located, we respectfully request a court order to enable us to process this claim.

20. Presently, the Bernstein Trust still has not been located. Accordingly, Jackson is not aware whether the Bernstein Trust even exists, and if it does whether its title is the "Simon Bernstein Insurance Trust dated 6/21/1995, Trust," as captioned herein, or the "Simon Bernstein Trust, N.A.", as listed as the Policy's contingent beneficiary (or otherwise), and/or if Ted Bernstein is in fact its trustee. In conjunction, Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.

21. In addition, it is not known whether "LaSalle National Trust, N.A." was intended to be named as the primary beneficiary in the role of a trustee (of the Lexington and/or Bernstein Trust), or otherwise. Jackson also has no evidence of the exact status of the Lexington Trust, which was allegedly dissolved.

22. Further, Jackson has received correspondence from Eliot Bernstein, attached as *Exhibit 1*, asserting that he and/or his children are potential beneficiaries under the Policy, (presumably under the Bernstein Trust, but nonetheless raising further questions as to the proper beneficiaries of the Policy), and requesting that no distributions of the Death Benefit Proceeds be made.

COUNT I- INTERPLEADER

23. This is an action of interpleader brought under Title 28 of the United States Code, Section 1335.

24. Jackson does not dispute the existence of the Policy or its obligation to pay the contractually required payment Death Benefit Proceeds under the Policy, which it has tendered into the registry of this Court.

25. Due to: (a) the inability of any party to locate the Bernstein Trust and uncertainty associated thereunder; (b) the uncertainty surrounding the existence and status of "LaSalle National Trust, N.A." (the primary beneficiary under the Policy) and the Lexington Trust; and (c) the potential conflicting claims under the Policy, Jackson is presently unable to discharge its admitted liability under the Policy.

26. Jackson is indifferent among the defendant parties, and has no interest in the benefits payable under the Policy as asserted in this interpleader other than to pay its admitted liability pursuant to the terms of the Policy, which Jackson has been unable to do by reason of uncertainty and potential competing claims.

27. Justice and equity dictate that Jackson should not be subject to disputes between the defendant parties and competing claims when it has received a non-substantiated claim for entitlement to the Death Benefit Proceeds by a trust that has yet to be located, nor a copy of which produced.

WHEREFORE, counter- and third-party plaintiff Jackson National Life Insurance Company respectfully requests pursuant to 28 U.S.C. 1335 that this Court enter an Order:

- a. That counter-defendants be temporarily enjoined during the pendency of this suit and thereafter permanently and perpetually enjoined from commencing any proceedings or prosecuting any claim against Jackson in any state or federal court or other forum with respect to the Policy;
- b. That judgment be entered in favor of Jackson on the Complaint in Interpleader;
- c. That upon determination that the proper parties have been made subject to this suit, Jackson be excused from further attendance upon this case, be dismissed from this case with an express finding of finality pursuant to Rule 54(b) of the Federal Rules of Civil Procedure;
- d. That Jackson be awarded actual court costs and reasonable attorneys' fees incurred in connection with this interpleader action to be paid out of the admitted liability deposited by it with the Clerk of the Court; and
- e. That Jackson be granted such other and further relief as this Court deems just and appropriate.

**JACKSON NATIONAL LIFE INSURANCE
COMPANY,**

By: /s/ Alexander D. Marks

One of Its Attorneys

Frederic A. Mendelsohn (ARDC No. 6193281)
Alexander D. Marks (ARDC No. 6283455)
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash Ave., 22nd Floor
Chicago, Illinois 60611
312-840-7000
312-840-7900 (facsimile)

CERTIFICATE OF SERVICE

The undersigned, an attorney, states that on June 26, 2013 he caused a copy of the foregoing Answer to Complaint and Counter-Claim and Third-Party Complaint for Interpleader to be filed electronically with the Northern District of Illinois electronic filing system, and electronically served upon the following:

Adam M. Simon
The Simon Law Firm
303 E. Wacker Drive, Suite 210
Chicago, IL 60601

/s/ Alexander D. Marks

1434759.1

EXHIBIT 14

**Policy Number
1009208**

Specimen Policy

Capitol Bankers Life

CAPITOL BANKERS LIFE INSURANCE COMPANY

A Stock Company

Home Office: Minneapolis, Minnesota

Business Office: Milwaukee, Wisconsin

CB

Policy Number

Sum Insured

Insured

Age & Sex

Plan

Policy Date

Dear Policy Owner:

This policy has been written in readable language to help you understand its terms. As you read through the policy, remember the words "we", and "our" refer to Capitol Bankers Life Insurance Company. Similarly, the words "you" and "your" refer to you, the Owner of this policy.

We will, subject to the terms of this policy, pay the death benefit to the Beneficiary when due proof of the Insured's death is received at our Business Office. The terms of this policy are contained on this and the following pages.

A Policy Summary is on the other side of this page. A Table of Contents is inside the back cover.

For service or information on this policy, contact the agent who sold the policy, any of our agency offices or our Business Office.

YOU HAVE A RIGHT TO RETURN THIS POLICY. If you decide not to keep this policy, return it within ten days after you receive it. It may be returned by delivering or mailing it to our Business Office or to any of our authorized agents. Upon return, the policy will be as though it had never been issued. We will promptly refund any premium paid for it.

Signed for Capitol Bankers Life Insurance Company at Milwaukee, Wisconsin.

Sincerely yours,

Richard E. Bright

President

Richard D. Hartman

Vice President

CURRENT VALUE LIFE

Whole Life Insurance for an Initial Term - Renewable Annually during Life of Insured -
Cash Surrender Values - Options to Change Premiums and Sum Insured -
Premiums Payable during Life of Insured - Nonparticipating

Premiums, benefits and policy values may vary from those illustrated on the Issue Date. See Part 4, "Renewal Options" and Part 10, "Basis of Our Computations."

POLICY SUMMARY

About this Summary

This summary briefly highlights some of the major policy provisions. Since this is a summary, only the detailed provisions of the policy will control. See those provisions for full information and any limits or restrictions that apply. To locate this policy's provisions, use the Table of Contents on the inside of the back cover. Your policy is a legal contract between you and us. You should, therefore, **READ YOUR POLICY CAREFULLY.**

The Type of Policy

This policy may be continued in force until the Insured dies. It is issued for an initial term of one year, but you have the right to renew it. The benefits and premiums may be changed at the end of each Policy Year. We will pay a death benefit if the Insured dies while the policy is in force.

Guaranteed and Current Rates

We guarantee a rate basis for calculating premiums for the benefits under this policy. If our current rate basis is lower, we will charge lower premiums for the same benefits. We may change our current rate basis at the end of any Policy Year. If we increase our current rate basis, your premium will be higher, but never more than the premium on the guaranteed basis.

Lifetime Benefits

There are other rights available while the Insured is living. These include:

- * The right to assign this policy.
- * The right to change the Owner or any Beneficiary.
- * The right to surrender this policy for its value.
- * The right to make loans.

Payment Options

The policy also includes a number of Payment Options. These provide alternate ways to pay the death benefit or the amount payable upon surrender of the policy.

Exclusions

Payment of benefits may be affected by other provisions in this policy. For example, see the provisions in Part 1 about suicide, contestability and misstatement of age or sex.

Premium Payments and Grace Period

Premiums are payable in advance during the lifetime of the Insured. We allow a 31-day grace period for payment of each premium after the first one. If a premium is not paid by the end of the grace period, the policy will lapse as of the due date of that premium. Even if the policy lapses, some benefits may be available as described in Part 5. In any event, you will have the right to reinstate this policy, subject to the requirements stated in Part 5.

Riders

This policy may contain riders which include added benefits or

Part 1. Definitions and Basic Provisions

**The Parties Involved—
Insured, Owner,
Beneficiary, Irrevocable
Beneficiary**

The Insured is the person whose life this policy insures. The Insured may be the Owner of this policy, or someone else may be the Owner.

The Owner is the person named as Owner of this policy in the application, unless later changed as provided in this policy. The Insured will be the Owner if no other person is named as Owner. If more than one person is named as Owner, they must act jointly unless they and we agree otherwise. Whenever the words "you" and "your" are used, they refer to the Owner.

A Beneficiary is any person named on our records to receive proceeds of this policy after the Insured dies. There may be different classes of Beneficiaries, such as Primary and Contingent. These classes set the order of payment. There may be more than one Beneficiary in a class.

Unless you provide otherwise, any death benefit that becomes payable under this policy will be paid in equal shares to the Beneficiaries living at the death of the Insured. Payments will be made successively in the following order:

- a. Primary Beneficiaries.
- b. Contingent Beneficiaries, if any, provided no Primary Beneficiary is living at the death of the Insured.
- c. The Owner, or the Owner's executor or administrator, provided no Primary or Contingent Beneficiary is living at the death of the Insured.

Any Beneficiary may be named an Irrevocable Beneficiary. An Irrevocable Beneficiary is one whose consent is needed to change that Beneficiary. Also, this Beneficiary must consent to the exercise of certain other rights by the Owner. We discuss ownership in Part 2.

**Policy Date, Issue Date,
Renewal Date, and
Policy Year**

Two important dates (shown on the Schedule Page) are the Policy Date and the Issue Date. Usually they are the same date.

The Policy Date is the starting point for determining premium due dates, Renewal Dates and Policy Years. The first Renewal Date is one year after the Policy Date. The period from the Policy Date to the first Renewal Date, or from one Renewal Date to the next, is called a Policy Year. A Policy Year does not include the Renewal Date at the end of the year.

This policy is issued for an initial term of one Policy Year. It may be renewed for additional terms of one Policy Year while the Insured is alive. We discuss renewal in Part 4.

The Issue Date is used to determine the start of the suicide and contestability periods. We discuss contestability and suicide below. The Issue Date will be earlier than the Policy Date only if this policy includes a rider which provides temporary term life insurance for a period before the Policy Date.

Policy a Legal Contract

This policy is a legal contract between you and us. The entire contract consists of the application and the policy, which includes any attached riders. We have issued this policy in return for the application and the payment of premiums. Any change or waiver of its terms must be in writing and signed by our President, a Vice President, our Secretary or an Assistant Secretary to be effective.

Limits on Our Right to Contest This Policy

We rely on all statements made by or for the Insured in the written application. These statements are considered to be representations and not warranties. We can contest the validity of this policy for any material misrepresentation of a fact. To do so, however, the misrepresentation must be contained in the written application and a copy of the application must be attached to this policy when it is issued.

We cannot contest the validity of this policy, except for failure to pay premiums, after it has been in force during the lifetime of the Insured for two years from its Issue Date.

Suicide Exclusion

If within two years from the Issue Date the Insured dies by suicide, whether sane or insane, the amount we pay will be limited to the premiums paid less any policy debt.

Misstatement of Age or Sex

If the date of birth or the sex of the Insured has been misstated in the application, we will adjust the benefits under this policy. If the benefits purchased by the premiums paid would have been lower at the correct age and sex, we will recalculate the benefits so that the Endowment Benefit for each Policy Year is not changed. If the benefits purchased by the premiums paid would have been higher at the correct age and sex, we will recalculate the benefits so that the amount at risk for each Policy Year is not changed. (Endowment Benefit and amount at risk are defined in Part 4.)

Meaning of In Full Force, Lapse and In Force

This policy will be "in full force" from the Issue Date, provided the first premium due is paid while the Insured is alive. It will continue "in full force" as long as all premiums are paid when due. We discuss premium due dates in Part 3. It also continues in full force for 31 days after the due date of an unpaid premium. If the unpaid premium is not paid by then, this policy will "lapse" as of that due date. Then, it will no longer be in full force.

Lapse is not necessarily the same as termination. When a policy lapses, the insurance may terminate or it may continue for a limited time or amount. If insurance continues after lapse, we say that the policy remains "in force", but no longer in full force. We discuss lapse in Part 5.

Home Office and Business Office

We are chartered by the State of Minnesota and have a legal office, known as our Home Office, in Minneapolis, Minnesota. Our operations are conducted at our Business Office, 735 N. Water Street, Milwaukee, Wisconsin. Our mail address is P.O. Box 2016, Milwaukee, Wisconsin 53201.

Part 2. Ownership

Rights of Owner

While the Insured is living, you may exercise all rights given by this policy or allowed by us. These rights include assigning this policy,

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changing Beneficiaries, changing ownership, enjoying all policy benefits and exercising all policy options.

The consent of any Irrevocable Beneficiary is needed to exercise any policy right except the right to:

- Change the frequency of premium payments.
- Change between regular premiums and alternate premium plans.
- Change the renewal option.
- Borrow on this policy to pay a premium on this policy.
- Reinstate this policy after lapse.

Assigning This Policy

This policy may be assigned. But for any assignment to be binding on us, we must receive a signed copy of it at our Business Office. We will not be responsible for the validity of any assignment.

Once we receive a signed copy, your rights and the interest of any Beneficiary or any other person will be subject to the assignment. An assignment is subject to any policy debt. We discuss policy debt in Part 7.

Changing the Owner or Beneficiary

The Owner or any Beneficiary may be changed during the Insured's lifetime. We do not limit the number of changes that may be made. To make a change, a written request, satisfactory to us, must be received at our Business Office. The change will take effect as of the date the request is signed, even if the Insured dies before we receive it. Each change will be subject to any payment we made or other action we took before receiving the request.

Part 3. Premium Payments

When Premiums Are Due

Premiums are the payments needed to keep this policy in full force. Premiums for each Policy Year are payable in advance during the Insured's lifetime until the end of the Policy Year. The first premium is due on the Policy Date. The first premium for a renewal Policy Year is due on the Renewal Date. Each subsequent premium is due when the period covered by the preceding premium ends. Each premium is due on the same day of the month as the day shown in the Policy Date.

Regular Premium Payments

Regular premiums may be paid annually, semiannually, quarterly or monthly. The frequency of payments may be changed by giving us advance written notice. A change may also be made as of any premium due date, without notice, by paying the regular premium for the frequency wanted. However, no premium may be paid for a period beyond the next Renewal Date. Our consent is needed if any change will result in a regular premium of less than \$20.

A semiannual premium is \$0.22 plus 51.5% of the annual premium. A quarterly premium is \$0.52 plus 26.5% of the annual premium. A monthly premium is \$0.70 plus 9% of the annual premium.

Alternate Premium Plans

We provide a number of alternate premium plans. These include a pre-authorized check payment plan. These plans are governed by the rules and rates we set. Our consent is needed to participate in any available plan.

Grace Period If an alternate premium plan is terminated, regular monthly premiums will then be payable.

Premiums for Renewal Policy Years After the first premium has been paid for any Policy Year, we allow a 31 day grace period to pay each following premium. This means that each premium after the first can be paid within 31 days after its due date. During this grace period the policy remains in full force. If a premium is not paid by the end of this grace period, the policy will lapse as of the premium due date. We discuss lapse in Part 5.

Where to Pay Premiums Premiums for the first Policy Year are shown on the Schedule Page. The premiums for a renewal Policy Year may differ from the premiums for the prior Policy Year. We discuss your Renewal Options in Part 4. The way we compute renewal premiums for the policy, excluding any attached rider, is described in Part 10. The premium for continuing any rider is shown on the Schedule Page. We will notify you of the renewal premiums before each Renewal Date.

Where to Pay Premiums Each premium after the first one is payable at our Business Office. A receipt for premium payments signed by one of our officers will be given upon request.

Part 4. Renewal Options

Right to Renew If this policy is in full force on a Renewal Date, it may be renewed for an additional Policy Year by paying a renewal premium. Payment must be made within 31 days of the Renewal Date. If the Insured dies within that 31 day period, this policy will be renewed automatically, but a renewal premium at the regular monthly frequency will be deducted from the death benefit.

The benefits and premiums for a renewal Policy Year may change from those in the prior term. They will depend on the Renewal Option selected. Renewal Options are discussed below. Also, we may use a rate basis which is more favorable to you than the rate basis we guarantee in this policy. Rate bases, and the way we compute renewal benefits and premiums, are discussed in Part 10.

Endowment Benefit An Endowment Benefit will be payable at the end of the Policy Year. If the policy is not renewed, the Endowment Benefit, less any policy debt, will be paid in one sum to the Owner.

If the policy is renewed, the Endowment Benefit will not be paid, but a new Endowment Benefit will be payable at the end of the new Policy Year. The Endowment Benefit for the first Policy Year is shown on the Schedule Page. Our procedure for computing the Endowment Benefit for renewal Policy Years is discussed in Part 10. We will notify you of the renewal Endowment Benefit before each Renewal Date.

Electing a Renewal Option You may choose a Renewal Option by notifying us in writing while the insured is alive and not later than 31 days after the Renewal Date. Any option you choose will apply until another option is elected. If no option has been chosen, Option B will apply.

- Amount at Risk** In discussing Options D, E and F, we use the phrase "amount at risk." The amount at risk for a Policy Year is the Sum Insured less the Endowment Benefit.
- Option A** **Minimum Premium Option.** The Sum Insured for the new Policy Year will be the prior Sum Insured less any policy debt repaid from the Endowment Benefit. However, the new Sum Insured will not be less than the Endowment Benefit at the end of the new Policy Year. The premium for the new Policy Year will be the smallest level premium which would permit the policy to be renewed for the new Sum Insured for the life of the Insured. In computing this premium, we will assume that the rate basis used for the renewal Policy Year will also be used for future renewal Policy Years.
- Option B** **Guaranteed Premium Option.** The Sum Insured for the new Policy Year will be the prior Sum Insured less any policy debt repaid from the Endowment Benefit. However, the new Sum Insured will not be less than the Endowment Benefit at the end of the new Policy Year. The premium for the new Policy Year will be the smallest level premium which would permit the policy to be renewed for the new Sum Insured for the life of the Insured. In computing this premium, we will assume that the guaranteed rate basis will be used for future renewal Policy Years.
- Option C** **Specified Premium Option.** The premium for the new Policy Year may be any amount you select, but not less than the premium required under Option A. The Sum Insured for the new Policy Year will be the prior Sum Insured less any policy debt repaid from the Endowment Benefit. The new Sum Insured will not be less than the Endowment Benefit at the end of the new Policy Year, however.
- Option D** **Increasing Benefit Option.** The Sum Insured for the new Policy Year will be changed so that the amount at risk for the new Policy Year will be the amount at risk for the prior Policy Year. The premium for the new Policy Year will be the smallest level premium which would permit the policy to be renewed for the new Sum Insured for the life of the Insured. In computing this premium, we will assume that the rate basis used for the renewal Policy Year will also be used for future renewal Policy Years.
- Option E** **Extra Premium Option.** The premium for the new Policy Year may be any amount you select, but not less than the premium required under Option D. The Sum Insured for the new Policy Year will be changed so that the amount at risk for the new Policy Year will be the amount at risk for the prior Policy Year.
- Option F** **Change in Benefit Option.** The Sum Insured may be changed to any amount you select. The premium for the new Policy Year may be any amount you select, but not less than the premium required under Option A for the new Sum Insured. When this option is chosen, you may also specify changes to be made on later Renewal Dates. Any change which would increase the amount at risk may be made only with our consent, however. We may require a written application, giving evidence of insurability of the Insured, to increase the amount at risk. If an application is required, we will have the same rights to contest the validity of the in-

Annual Report

crease, or to limit the amount of the increase we will pay in the event of suicide, as if we had issued a separate policy for the increase in the amount at risk.

Before each Renewal Date while this policy is in full force, we will give you an Annual Report for this policy. This report will show the following items:

- The Sum Insured, Endowment Benefit and premium for the current Policy Year.
- The Renewal Option in effect and the Sum Insured, Endowment Benefit and premium for the next Policy Year under this option.
- Any policy debt as of the date the report is prepared.
- The minimum level renewal premium under our current rate basis (Option A) and under the guaranteed rate basis (Option B).
- Any change in our current rate basis for the next Policy Year, and its effect on values for the next Policy Year.

Illustrations

This policy includes a Table of Illustrative Values. The Table follows the Schedule Page. It is based on the Renewal Option in effect when this policy was issued. The Table shows values which would apply if the guaranteed rate basis were used for all renewal Policy Years. If you pay the premiums shown in this Table and do not change the Sum Insured, then the actual policy values will be at least as large as those shown in the Table. If you choose to pay smaller premiums, however, then the policy values may be smaller than those illustrated.

Upon request, we will provide an illustration as of the next Renewal Date of future premiums, Sums Insured and Endowment Benefits under any Renewal Option.

Part 5. Lapse and Reinstatement

What Happens if This Policy Lapses

If any premium is not paid within 31 days after its due date, this policy will lapse as of the due date of that premium. We call this premium due date the date of lapse.

Several things can occur when this policy lapses. First, this policy is no longer "in full force." If there is no cash surrender value as of the date of lapse, the insurance will terminate. But if there is a cash surrender value, it will automatically be used as a net single premium at the attained age of the Insured to provide either extended term insurance or paid-up life insurance and the policy will continue "in force."

These two types of insurance are explained below. Either will begin as of the date of lapse.

Extended Term Insurance

This is a level amount of insurance for a limited period of time. The amount of insurance is the Sum Insured on the date of lapse less any policy debt. The cash surrender value on the date of lapse determines the period of time that extended term insurance will be provided. The insurance terminates at the end of this period.

Paid-Up Life Insurance

This is a level amount of insurance for the lifetime of the Insured. The cash surrender value on the date of lapse determines the amount of paid-up life insurance that will be provided. The amount of paid-up life insurance may not exceed the Sum Insured on the date of lapse less any policy debt, however. If the cash surrender value is larger than the value of the maximum paid-up life insurance, then the paid-up insurance will be endowment insurance for the maximum amount.

Which Type of Insurance Applies

We automatically provide extended term insurance. But in the following situations, we provide paid-up life insurance instead:

- The amount of paid-up life insurance equals or is more than the amount of extended term insurance that would be provided, or
- The amount of paid-up life insurance is at least \$1,000 and a written request for paid-up life insurance is received at our Business Office before the end of 62 days after the date of lapse, or
- This policy is in a special premium class. The policy is in a special premium class only if shown on the Schedule Page.

If paid-up life insurance is requested and the Insured dies within 62 days after the date of lapse, we will provide extended term insurance if it provides a larger death benefit on the date of death. But, this will happen only if the extended term insurance could have been elected on the date of lapse.

Riders Not Included

Extended term insurance and paid-up life insurance benefits do not apply to any rider attached to this policy, unless specifically provided in that rider.

Policy Rights After Lapse

While this policy is in force as extended term insurance or paid-up life insurance, all the rights granted by it are still available, unless this policy states otherwise.

Reinstatement

After this policy has lapsed, it may be reinstated — that is, put back in full force. However, the policy cannot be reinstated if it has been surrendered for its cash surrender value. Reinstatement must be made within five years after the date of lapse and during the Insured's lifetime. Also, all policy debt must be repaid or reinstated with interest, from the date of lapse to the date of reinstatement. Interest will be at the rate used for policy loans. Further requirements depend on when this policy is reinstated.

Prompt Reinstatement — This is reinstatement within 62 days after the date of lapse. Evidence of insurability is not required. All overdue premiums must be paid.

Later Reinstatement — This is reinstatement more than 62 days after the date of lapse. Evidence of insurability satisfactory to us is required. All overdue premiums must be paid with interest from their due dates to the date of reinstatement. Interest will be at the rate used for policy loans.

Part 6. Policy Loans

Right to Make Loans

After the first Policy Year, loans can be made on this policy at any time while it is in full force. Loans can also be made if it is in force after lapse as paid-up insurance. However, the policy must be properly assigned to us before any loan is made. No other collateral is needed. We may delay granting any loan for up to six months, except for a loan to pay premiums on this policy or any other policy we issue. We refer to all outstanding loans less unearned interest as "policy debt."

Maximum Loan Available

The maximum policy loan is an amount equal to the cash surrender value on the next Renewal Date less any premiums due before then. Any amount due us on the date of the loan will be subtracted from the loan. Interest due on the loan will also be subtracted. We will pay the balance.

Interest

The interest rate for loans is stated on the Schedule Page. Interest to the next Renewal Date is due in advance when a loan is made. If interest is not paid when due, it will be added to the policy debt and will bear interest at the same rate.

If any policy debt is repaid, any unearned interest on the amount repaid will be credited to the loan amount. Any unearned interest will be added to the death benefit if the Insured dies. It will be added to the cash surrender value if the policy is surrendered or lapses.

Repayment

Policy debt may be repaid anytime while this policy is in force. It may not be repaid after the Insured dies. If there is any policy debt on a Renewal Date, it will be repaid out of the Endowment Benefit. In lieu of this automatic repayment, any policy debt outstanding on a Renewal Date may be repaid in cash within 31 days after the Renewal Date, but interest must be paid to the date of repayment. If this is done, we will calculate the benefits and premiums for the next Policy Year as if repayment had been made on the Renewal Date.

Policy Debt Limit

Policy debt may not equal or exceed the policy value. If this limit is reached, we can terminate this policy. To terminate for this reason we must mail written notice to the Owner and any assignee shown on our records at their last known addresses. This notice will state an amount that will bring the policy debt back within the limit. If we do not receive payment within 31 days after the date we mailed the notice, this policy will terminate at the end of those 31 days.

Part 7. Cash Surrender

Right to Surrender

This policy may be surrendered for its cash surrender value any time before the Insured dies. Surrender will be effective on the date we receive this policy and a written surrender request, satisfactory to us, at our Business Office. A later effective date may be elected in the surrender request.

Policy Value

The policy value on any Renewal Date is the Endowment Benefit if the policy is in full force. The policy value on the first Renewal Date is shown

on the Schedule Page. The policy value on any later Renewal Date will depend on the renewal option elected. This is discussed in Part 4.

The policy value can be computed at any time during a Policy Year. In that case allowance will be made for the period of time since the last Renewal Date and for any premiums paid for any part of that Policy Year.

If this policy is in force after lapse, the policy value at any time is the reserve for the insurance provided. See "Part 10. Basis of Computations."

Cash Surrender Value

The cash surrender value is the policy value less any policy debt.

We compute all the amounts that go into the cash surrender value as of the effective date of surrender. However, in two situations the policy value is computed as of an earlier date. First, if this policy is surrendered within 62 days after the due date of an unpaid premium, the value will not be less than it was on that due date. Second, if the policy is surrendered within 30 days after a Renewal Date while extended term insurance or paid-up life insurance is in effect, the value will not be less than it was on that Renewal Date. We use these earlier dates only if a higher cash surrender value results.

How We Pay

The cash surrender value may be paid in one sum, or it may be applied under any payment option elected. See "Part 9. Payment of Policy Proceeds." We may delay paying the cash surrender value for up to six months from the date the request and this policy are received at our Business Office. If payment is delayed for 30 days or more, we will add interest to it. The amount of interest will be the same as would be paid under Option 4 of the payment options for that period of time.

Part 8. The Death Benefit

Amount of the Death Benefit

The death benefit is the amount of money we will pay when due proof of the Insured's death is received at our Business Office. The amount of the death benefit will be determined as of the date of death. Any amounts paid to us after that date will be refunded. Any payments made by us after that date will be deducted from the death benefit.

If the Insured dies while this policy is in full force, the basic death benefit is the Sum Insured for the Policy Year in which death occurred. If the Insured dies while this policy is in force after lapse, the basic death benefit will be the amount of extended term insurance or paid-up life insurance. The death benefit is the basic death benefit with certain additions and deductions. We add the part of any premium paid for a period beyond the Policy Month of death. We deduct any policy debt. We also deduct a premium on the regular monthly frequency, if death occurs within 31 days of the due date of an unpaid premium.

Interest on the Death Benefit

If the death benefit is paid in one sum, we will add interest from the date of death to the date of payment. The amount of interest will be the same as would be paid under Option 4 of the payment options for that period of time. See "Part 9. Payment of Policy Proceeds" for a description of Option 4.

If the death benefit is applied under a payment option, interest will be paid from the date of death to the effective date of that option. It will be paid in one sum to the Beneficiary living on that effective date. The amount of interest will be the same as would be paid under Option 4 for that period of time.

Part 9. Payment of Policy Proceeds

Availability of Options

The proceeds of this policy will be paid in one sum unless otherwise provided. As an alternative to payment in one sum, all or part of the proceeds may be applied under a payment option. However, our consent is required for the election of a payment option by a fiduciary or any entity other than a natural person. If this policy is assigned, any amount due to the assignee will be paid in one sum. The balance, if any, may be applied under any payment option.

Electing a Payment Option

To elect any option, we require that a written request, satisfactory to us, be received at our Business Office. You may elect an option during the Insured's lifetime. If the death benefit is payable in one sum when the Insured dies, the Beneficiary may elect an option. The Beneficiary must make this choice before we have paid the proceeds and within three months after we receive due proof of the Insured's death.

Unless we agree otherwise when the option is elected, all payments under any option chosen will be made to the designated payee or to his or her executor or administrator. We may require proof of age of any person or persons on whose life payments depend as well as proof of the continued survival of any such person(s).

Minimum Amounts

If the amount to be applied under any option for any payee is less than \$5,000, we may pay that amount in one sum instead. If the payments to any person under any option come to less than \$50 each, we have the right to make payments at less frequent intervals.

Description of Options

This section provides a brief description of the various payment options that are available. Any other payment option agreed to by us may be elected. The payment options are described in terms of monthly payments. Annual, semiannual, or quarterly payments may be requested instead. The amount of these payments will be determined in a way which is consistent with monthly payments and will be quoted on request.

At the end of this Part you will find tables illustrating the guaranteed monthly payment provided by several of the options described in this section. The amounts shown for Option 1, Option 2 and Option 5 are the minimum monthly payments for each \$1,000 applied. The actual payments will be based on the monthly payment rates we are using when the first payment is due. They will not be less than those shown in the tables.

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Fixed Time Payment Option. Equal monthly payments will be made for

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any period selected, up to 30 years. The amount of each payment depends on the total amount applied, the period selected and the monthly payment rates we are using when the first payment is due. The rate of any payment will not be less than shown in Payment Option Table 1.

Option 2

Lifetime Payment Option. Equal monthly payments are based on the life of a named person. Payments will continue for the lifetime of that person. The variations are:

Payments guaranteed for 10 or 20 years. Payments stop at the end of the selected guaranteed period or when the named person dies, whichever is later.

Payments guaranteed for amount applied. Payments stop when they equal the amount applied or when the named person dies, whichever is later.

The amount of each payment depends on the total amount applied, the variation selected, the age and sex of the named person and the monthly payment rates we are using when the first payment is due. The rate of any payment will not be less than shown in Payment Option Table 2.

Option 3

Fixed Amount Payment Option. Each monthly payment will be for an agreed fixed amount. The amount of each payment may not be less than \$15 for each \$1,000 applied. Interest will be credited each month on the unpaid balance and added to it. This interest will be at a rate determined by us, but not less than the equivalent of 4% per year. We may change the rate from time to time, but not more than once per year. Payments continue until the amount we hold runs out. The last payment will be for the balance only.

Option 4

Interest Payment Option. We will hold any amount applied under this option. Interest on the unpaid balance will be paid each month at a rate determined by us. This rate will be not less than the equivalent of 4% per year. We may change the rate from time to time, but not more than once per year. Upon death of the payee, we will pay the amount held by us along with any accrued and unpaid interest.

Option 5

Joint Lifetime Payment Option With Reduced Payments. Monthly payments are based on the lives of two named persons. Payments will continue while both are living. When one dies, payments are reduced by one-third and will continue for the lifetime of the other. Payments stop when both persons have died.

The amount of each payment depends on the total amount applied, the ages and sexes of the named persons and the monthly payment rates we are using when the first payment is due. The rate of any payment will not be less than shown in Payment Option Table 3.

Option 6

Single Premium Life Annuity Purchase Option. Any single premium immediate life annuity being issued by us on the effective date of the option may be purchased at a reduced premium rate. The premium rate for the annuity will be 4% less than our then published premium rate.

**Effective Date and
Payment Dates**

The effective date of an option is the date the amount is applied under that option. For a death benefit, this is the date that due proof of the Insured's death is received at our Business Office. For the cash surrender value, it is the effective date of surrender.

The first payment is due on the effective date, except the first payment under Option 4 is due one month later. A later date for the first payment may be requested in the payment option election. All payment dates will fall on the same date of the month as the first one. No payment will become due until a payment date. No part payment will be made for any period shorter than the time between payment dates.

Withdrawals and Changes

If provided in the payment option election, all or part of the unpaid balance under Option 3 or 4 may be withdrawn or applied under any other option. If the cash surrender value is applied under either option, we may delay payment of any withdrawal for up to six months after the date of surrender. Interest at the rate in effect for Option 4 during this period will be paid on the amount withdrawn.

Payments under Options 1, 2 and 5 may not be anticipated, withdrawn before due, or applied under any other option.

Income Protection

To the extent permitted by law, each option payment and any withdrawal shall be free from legal process and the claim of any creditor of the person entitled to it. No option payment and no amount held under an option can be taken or assigned in advance of its payment date, unless the Owner's written consent is given before the Insured dies. This consent must be received at our Business Office.

Supplementary Contract

We will issue to the payee a supplementary contract stating the terms of settlement under the payment option elected.

PAYMENT OPTION TABLES - Minimum Monthly Income Guaranteed For \$1,000 of Premiums

TABLE 1
INSTALLMENT PAYMENTS FOR A SPECIFIED PERIOD OF TIME

TABLE 2
LIFE INCOME PAYMENTS WITH INSTALLMENT PAYMENTS FOR A SPECIFIED PERIOD OF TIME
 The amount of income is shown on the left and the percentage of the reserve on the right date of the first payment

No. of Years	Monthly Payment	No. of Months	Age at Payment	PAYMENTS GUARANTEED FOR		Age at Payment	PAYMENTS GUARANTEED FOR		Age at Payment	PAYMENTS GUARANTEED FOR	
				10 Years	20 Years		10 Years	20 Years		10 Years	20 Years
1	84.84	12	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
2	42.42	24	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
3	28.28	36	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
4	21.21	48	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
5	16.96	60	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
6	13.97	72	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
7	11.98	84	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
8	10.49	96	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
9	9.16	108	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
10	7.97	120	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
11	6.91	132	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
12	5.97	144	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
13	5.14	156	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
14	4.41	168	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
15	3.78	180	10	100.00	100.00	10	100.00	100.00	10	100.00	100.00
Annual Payment of 11.787 times the monthly premium.											
Quarterly Payment of 2.996 times the monthly premium.											

TABLE 3
JOINT AND TWO THIRDS TO THE SURVIVOR LIFE PAYMENT
 The amount of reserve is shown on the left and the percentage of the reserve on the right date of the first payment

Age of Male	AGE OF FEMALE PAYEE					Age of Male	AGE OF FEMALE PAYEE					Age of Male	AGE OF FEMALE PAYEE				
	50	55	60	65	70		50	55	60	65	70		50	55	60	65	70
45	4.53	4.70	4.88	5.06	5.24	5.42	5.60	5.78	5.96	6.14	6.32	6.50	6.68	6.86	7.04		
46	4.56	4.74	4.92	5.10	5.28	5.46	5.64	5.82	6.00	6.18	6.36	6.54	6.72	6.90	7.08		
47	4.60	4.77	4.95	5.13	5.31	5.49	5.67	5.85	6.03	6.21	6.39	6.57	6.75	6.93	7.11		
48	4.63	4.81	5.01	5.21	5.41	5.61	5.81	6.01	6.21	6.41	6.61	6.81	7.01	7.21	7.41		
49	4.65	4.85	5.05	5.25	5.45	5.65	5.85	6.05	6.25	6.45	6.65	6.85	7.05	7.25	7.45		
50	4.68	4.88	5.10	5.31	5.52	5.73	5.94	6.15	6.36	6.57	6.78	6.99	7.20	7.41	7.62		
51	4.72	4.92	5.14	5.35	5.56	5.77	5.98	6.19	6.40	6.61	6.82	7.03	7.24	7.45	7.66		
52	4.76	4.96	5.19	5.40	5.61	5.82	6.03	6.24	6.45	6.66	6.87	7.08	7.29	7.50	7.71		
53	4.79	5.00	5.22	5.43	5.64	5.85	6.06	6.27	6.48	6.69	6.90	7.11	7.32	7.53	7.74		
54	4.82	5.04	5.26	5.47	5.68	5.89	6.10	6.31	6.52	6.73	6.94	7.15	7.36	7.57	7.78		
55	4.85	5.08	5.30	5.51	5.72	5.93	6.14	6.35	6.56	6.77	6.98	7.19	7.40	7.61	7.82		
56	4.88	5.12	5.34	5.55	5.76	5.97	6.18	6.39	6.60	6.81	7.02	7.23	7.44	7.65	7.86		

Part 10. Basis of Our Computations

Guaranteed and Current Rate Basis

You determine both the Sum Insured and the premium for each renewal Policy Year when you choose the Renewal Option. (See Part 4.) From these, we calculate the Endowment Benefit for the new Policy Year. (See "Amount of Endowment Benefit" below). We call the combination of the mortality table, the interest rate and the expense charges used in this calculation our "rate basis." Our "guaranteed rate basis" consists of the actuarial assumptions set out below and an expense charge equal to the factor times the annual mode premium. This expense charge factor is stated on the Schedule Page. This rate basis cannot be changed.

Our "current rate basis" is a different combination of mortality table, interest rate and expense charges which we use for policies of this class. We may change our current rate basis from time to time. Any change will take effect on the next Renewal Date. We will change our current rate basis only to reflect changes in expected future mortality experience, interest return and level of expenses for policies of this class. We will not change our current rate basis to reflect past profits or losses. Our current rate basis will not be affected by any adverse change in the risk class of the insured.

When this policy is renewed, we will use our current rate basis to calculate the Endowment Benefit for the new Policy Year if this will give you a larger Endowment Benefit. In this case, the larger Endowment Benefit will be guaranteed for the new Policy Year and all calculations of the policy values during the year will be based on that Endowment Benefit. If our current rate basis is used to compute the Endowment Benefit for a Policy Year, we will also use this basis to compute the minimum premium needed to renew the policy. (See "Minimum Renewal Premium" below.)

Actuarial Assumptions

This section discusses the mortality and interest rates we use to compute benefits, premiums and reserves for this policy. Except as otherwise stated above, we use the Commissioners 1958 Standard Ordinary Mortality Table, an interest rate of 4½% per year and curtail functions. For extended term insurance calculations we use the Commissioners 1958 Extended Term Mortality Table. If the Insured is female, the mortality rates for ages 18 and older are the rates for a male 6 years younger. For females ages 12 through 17, we use the male mortality rate for age 12. Below age 12, the female mortality rates are the same as the male rates.

Special Premium Class

This policy is in a special premium class only if shown on the Schedule Page. While this policy is in a special premium class, we will increase the mortality rates used in calculating the Endowment Benefits and the minimum premiums for renewal Policy Years. These increases in the mortality rates are guaranteed from the Issue Date and may not be increased thereafter. Upon request, we will furnish you with a copy of any special premium class mortality rate increases used for this policy.

Amount of Endowment Benefit

The Endowment Benefit for the first Policy Year is shown on the Schedule Page.

The Endowment Benefit for any renewal Policy Year is calculated as follows. We take the annual mode premium elected for the new Policy Year. We deduct the expense charge from this premium. We add the Endowment Benefit for the prior Policy Year. We deduct any portion of the prior Endowment Benefit used to repay policy debt on the Renewal Date. We deduct the one year term net single premium for the new Sum Insured. We divide the result by the net single premium for a one year pure endowment of one. The quotient is the Endowment Benefit at the end of the new Policy Year.

Minimum Renewal

We take the present value at the attained age of the Insured for an amount of whole life insurance equal to the Sum Insured for the new Policy Year. We subtract the Endowment Benefit at the end of the prior Policy Year. We add any policy debt repaid from that Endowment Benefit. We divide by the present value at the attained age of the Insured of a life annuity due of one minus the expense charge factor per year. The minimum renewal premium is the quotient, but not less than zero.

Reserves and Policy Values


The reserve is the amount of money which, according to our assumptions, must be held and invested to provide future benefits guaranteed under this policy. The policy value is the cash surrender value if there is no policy debt. Reserves and policy values are always computed using the assumptions stated under "Actuarial Assumptions" above.

We have filed a detailed statement of the method we use to calculate reserves, policy values and paid-up insurance benefits with the state where this policy is delivered. All these values and benefits are not less than those required by the laws of that state.

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 <p>CURRENT VALUE LIFE Life Insurance for an Initial Term Renewable Annually Life of Insured Cash Surrender Value Options to Change Premiums and Sum Insured Premiums Payable during Life of Insured Nonparticipating</p>	<p>Capitol Bankers Life CAPITOL BANKERS LIFE INSURANCE COMPANY Home Office: Minneapolis, Minnesota Business Office: Milwaukee, Wisconsin</p> <p>Please read your policy and the copy of your application which is attached. If there is any feature of the policy you do not understand, you should ask the agent who sold the policy or write us. Should you find any error or omission in your application, we urge you to write us, so that we may give immediate consideration to the error or omission.</p> <p>When writing to our Business Office, please use the number of your policy.</p>
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CVL1801

JCK001117

SCHEDULE PAGE

THIS PAGE SHOWS SPECIFIC INFORMATION ABOUT THIS POLICY AND IS REFERRED TO THROUGHOUT THE POLICY.

POLICY NUMBER: 1009208 \$2,000,000 SUM INSURED
 INSURED: SIMON BERNSTEIN 47 MALE AGE AND SEX
 PLAN: CURRENT VALUE LIFE DEC 27, 1982 POLICY DATE

THE OWNER AND BENEFICIARY ARE AS STATED IN THE APPLICATION UNLESS LATER CHANGED. THIS POLICY IS IN A PREFERRED PREMIUM CLASS. THE ISSUE DATE OF THIS POLICY IS DEC 27, 1982.

EXPENSE CHARGE FACTOR FOR GUARANTEED RATE BASIS (SEE PART 10): 0.15258
 POLICY LOAN INTEREST RATE (SEE PART 6): 7.40% PER YEAR (IN ADVANCE).

 THE CHARGE FOR ANY ADDITIONAL BENEFITS WHICH ARE PROVIDED BY RIDER IS SHOWN BELOW. ONLY A BRIEF DESCRIPTION IS GIVEN. THE COMPLETE PROVISIONS ARE INCLUDED IN THE RIDER.

RIDER NUMBER	BENEFITS PROVIDED	ANNUAL PREMIUM
.....
	-NONE-	NO CHARGE

 ENDOWMENT BENEFIT AT END OF FIRST POLICY YEAR: NONE

TOTAL PREMIUMS FOR FIRST POLICY YEAR, INCLUDING ANY RIDER PREMIUMS:

ANNUAL	SEMIANNUAL	QUARTERLY	MONTHLY
\$24,235.00	\$12,481.24	\$6,422.79	\$2,181.85

PREMIUMS FOR RENEWAL YEARS MAY DIFFER, SEE PART 4 - RENEWAL OPTIONS. YOU WILL BE NOTIFIED OF RENEWAL PREMIUMS BEFORE EACH RENEWAL DATE.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

**Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

**FILERS:
Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually,
Pamela B. Simon, Adam M. Simon,
David B. Simon, The Simon Law Firm,
STP Enterprises, Inc. (“Movants”).**

ELIOT IVAN BERNSTEIN,)
)
)
 Cross-Plaintiff)
)
 v.)
)
 TED BERNSTEIN, individually and)
 as alleged Trustee of the Simon Bernstein)
 Irrevocable Insurance Trust Dtd, 6/21/95)
)
 Cross-Defendant)
 and,)
)
 PAMELA B. SIMON, DAVID B.SIMON,)
 both Professionally and Personally)
 ADAM SIMON, both Professionally and)
 Personally, THE SIMON LAW FIRM,)
 TESCHER & SPALLINA, P.A.,)
 DONALD TESCHER, both Professionally)
 and Personally, ROBERT SPALLINA,)
 both Professionally and Personally,)
 LISA FRIEDSTEIN, JILL IANTONI)
 S.B. LEXINGTON, INC. EMPLOYEE)
 DEATH BENEFIT TRUST, S.T.P.)
 ENTERPRISES, INC. S.B. LEXINGTON,)
 INC., NATIONAL SERVICE)
 ASSOCIATION (OF FLORIDA),)
 NATIONAL SERVICE ASSOCIATION)
 (OF ILLINOIS) AND JOHN AND JANE)
 DOES)
)
 Third-Party Defendants.)
 _____)

NOW COMES, the above-referenced, Counter-defendants, Cross-defendants, and Third-party defendants by and through their counsel Adam M. Simon, (collectively referred to as “Movants”), and respectfully submit this memorandum of law in support of their motion for summary judgment as to each and every one of Eliot Bernstein’s counterclaims, cross-claims and third-party claims (collectively referred to as “Eliot’s Claims”).

I. INTRODUCTION

Movants shall demonstrate that all of Eliot's Claims fail as a matter of law for several related reasons. First, Eliot has not pled a claim to the Policy Proceeds as beneficiary, because he cannot. He was never named a beneficiary of the Policy Proceeds on the records of the Insurer and neither were his children. Next, Eliot's Claims are indirect relying instead on the propositions that the Estate of Simon Bernstein (the "Estate") is the beneficiary of the Policy Proceeds by default and that Eliot is a beneficiary of the Estate or a Simon Bernstein Testamentary Trust at issue in the Probate Actions. But, as Movants will show neither proposition is true, and as a result Eliot cannot plead a viable cause of action against Movants.

After sixty-one pages of allegations – violating both the rules of civil procedure and local rules requiring concise and plain statements of fact – Eliot finally sets forth seven counts styled as fraud, civil conspiracy, negligence, legal malpractice, abuse of process, breach of fiduciary duty and conversion. But, Eliot's Claims also share a fatal flaw, and that is he has not and cannot plead damages because he merely alludes to purported beneficial interests without providing any allegation of facts, or supporting documentation that show he is a beneficiary of either the Estate of Simon Bernstein, or the Simon Bernstein testamentary trust at issue in the Probate Actions. To the contrary, Eliot has lost standing to participate in the Probate Actions on his own behalf after it was determined that the testamentary documents at issue in the Probate Actions are in fact valid, genuine and enforceable. Judge John L. Philips also determined that Simon Bernstein's grandchildren are the beneficiaries of his Estate, and none of his children are beneficiaries, including Eliot. Eliot also lacks standing to participate in the Probate Actions on behalf of his children as the court appointed a guardian ad litem to act on their behalf after finding Eliot's actions in Florida to be "adverse and destructive" to his children's interests.

A separate basis for granting third-party defendants' motion for summary judgment was articulated by Judge St. Eve in her Order dismissing former third-party defendants, Tescher & Spallina. Judge St. Eve found that since Eliot faces no potential liability in the instant action, Rule 14 did not authorize Eliot to file third-party claims against any third-party defendant. So, this same reasoning also applies to the remaining third-party defendants. And with regard to the sole issue raised by the Insurer's interpleader action in the Northern District, Eliot has failed to produce any coherent set of facts, documentation or other evidence that Eliot or his children have ever been named a beneficiary of the Policy Proceeds on the records of the Insurer.

II. BACKGROUND

A. SIMON AND SHIRLEY BERNSTEIN AND THEIR ESTATES

Simon Bernstein, the insured and decedent in this matter, had a long career as a life insurance agent including owning and operating several insurance brokerages. Simon Bernstein was married to his spouse, Shirley, for fifty-two years prior to Shirley's death in 2010. Simon and Shirley Bernstein had five children, whose names in order of age are as follows: Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein. All five of Simon Bernstein's children are now adults with children of their own. Simon and Shirley Bernstein had ten grandchildren from their five children. (SoF ¶3, ¶6, ¶8, ¶9, ¶10). Simon Bernstein was the Insured under the Policy. On the day Simon Bernstein passed away in 2012, Heritage was the successor insurer to the insurance company that issued the Policy. (SoF ¶11, ¶26).

Initially, the Bernstein Trust filed an action for breach of contract against Heritage in the Circuit Court of Cook County. Heritage removed the action from Cook County Court to the Northern District of Illinois. Heritage then filed a counterclaim for interpleader, and named the Bernstein Trust, Eliot Bernstein, and certain banks named in the caption above as potential

competing claimants to the Policy Proceeds. With leave of court, Heritage deposited the Policy Proceeds with the Registry of the Court and was subsequently dismissed from the case. (SoF ¶11, ¶37). After being served, Eliot Bernstein appeared pro se and filed cross-claims, counter-claims, and third-party claims (“Eliot’s Claims”) naming the existing parties and many new third-parties. (SoF ¶3, ¶25). The Estate of Simon Bernstein was granted leave to intervene in August of 2014. The Estate’s intervenor complaint alleges that if no other claimant can prove up their claim, then the Estate should take the Policy Proceeds by default. (SoF ¶3, ¶25).

B. THE PARTIES

Please see SoF ¶1-¶25 for a review of the identity and status of the parties.¹

C. THE POLICY AND POLICY PROVISIONS

The Policy was originally purchased from Capitol Bankers by the VEBA in December of 1982 to insure the life of Simon Bernstein and was issued as Policy No. 1009208. (SoF ¶26). The Policy provisions which set forth both the definitions of a beneficiary under the Policy, and the requirements for naming or changing a beneficiary of the Policy are the controlling factors in making the determination as to whom is the beneficiary of the Policy Proceeds. *Bank of Lyons v. Schultz*, 22 Ill.App.3d 410, 415, 318 N.E.2d 52, 57 (1st Dist. 1974) *citing* 2 Appelman, Insurance Law and Practice §921 (1966).

The Policy includes the Insurer’s requirements for the Policy Owner to effectuate a change of beneficiary. With regard to changing the beneficiary, the Policy provides as follows:

The Owner or any Beneficiary may be changed during the Insured’s lifetime. We do not limit the number of changes that may be made. *To make a change, a written request, satisfactory to us, must be received at our Business Office.* The change will take effect as of the date the request was signed, even if the Insured dies before we receive it. Each

¹ Pursuant to Local Rule 56.1, Movants are concurrently filing their Statement of Uncontested Material Facts (“SoF”) and Appendix of Exhibits thereto.

change will be subject to any payment we made or other action we took before receiving the request. **(Ex. 14 at bates #JCK00103)**. (emphasis added).

D. THE INSURED AND INSURER

Simon Bernstein was the Insured under the Policy. **(SoF, ¶26)**. The Insurer of the Policy changed over the life of the Policy from time to time through succession. The Insurer has been previously dismissed from this case after having deposited the Policy Proceeds with the Registry of the Court. Prior to its dismissal, the Insurer did not dispute either the existence of the Policy or its liability for the Policy Proceeds following the death of the Insured. **(SoF ¶11, ¶37)**

E. THE POLICY PROCEEDS (THE “STAKE”)

In the Insurer’s Complaint for Interpleader, the Insurer represented that the net death benefit payable under the Policy was \$1,689,070 (less an outstanding policy loan). **(Ex. 13, at ¶17)**. No objections were made by any Party to this litigation regarding the amount of the Policy Proceeds that the Insurer deposited with the Registry of the Court. In short, the amount of the Policy Proceeds is undisputed. **(SoF ¶11)**.

III. ARGUMENT

A. STANDARDS ON SUMMARY JUDGMENT

Summary judgment is appropriate when “there is no genuine issue as to any material fact” and the movant “is entitled to judgment as a matter of law.” *Simon Bernstein Irrevocable Trust Dtd 6/21/95 v. Heritage Union Life Insurance Co., et al.* No. 13 C 3643 **(Dkt. #220)** citing *Spurling v. C & M Fine Pack, Inc.*, 739 F.3D 1055, 1060 (7TH Cir. 2014). The party seeking summary judgment has the burden of establishing that there is no genuine dispute as to any material fact. *Id* citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Only disputes “that might affect the outcome of the suit...will properly preclude the entry of summary judgment.” “When the material facts are not in dispute...the sole question is whether the moving party is

entitled to judgment as a matter of law.” *ANR Advance Transp. V. Int’l Bhd. Of Teamsters Local 710*, 153 F.3d 774, 777 (7th Cir. 1998). If full summary judgment is not warranted, the court may grant partial summary judgment. Fed R. Civ. P. 56(a). But, summary judgment is not warranted “if the evidence is such that a reasonable jury could return a verdict for the non-moving party,” and the Court must “construe all facts and reasonable inferences in the light most favorable to the non-moving party. *Simon Bernstein Irrevocable Trust Dtd 6/21/95*, No. 13 cv 3643 citing *Liberty Lobby*, 477 U.S. 242, 255 (1986), *Carter v. City of Milwaukee*, 743 F.3d 540, 543 (7th Cir. 2014).

B. ELIOT DOES NOT PLEAD A CLAIM TO THE POLICY PROCEEDS, AND INSTEAD IS SHOPPING FOR AN ALTERNATIVE FORUM TO SEEK RELIEF HE HAS BEEN UNABLE TO OBTAIN IN THE PROBATE ACTIONS.

This motion for summary judgment does not seek a final determination that the Bernstein Trust exists and is entitled to the Policy Proceeds as beneficiary. Instead, this motion is confined to exposing the deficiencies with Eliot’s Claims that entitle Movants to summary judgment as to those claims. Eliot’s Claims fail to set forth any facts or documents in support of his spurious allegations that either he or his children were named beneficiaries of the Policy. Eliot’s Claims relate almost exclusively to matters occurring in the Probate Actions and are devoted to seeking relief here that he was denied in Florida. Instead of pleading a claim to the Policy Proceeds at issue in the instant litigation, Eliot pleads claims sounding in fraud, negligence, breach of fiduciary duty, conversion, abuse of legal process, legal malpractice and civil conspiracy relating primarily to the Probate Actions. Eliot’s Claims and his efforts to amend those claims are nothing more than blatant -- but futile -- forum-shopping.

None of the prayers for relief made for each of Eliot’s Claims seek the Policy Proceeds. Instead, in section “(i)” of his prayer for relief, Eliot asks the court to seize all records regarding

the Policies. But, Eliot has all Parties' Rule 26 production of documents including the *Insurer's records*. And, Eliot had well over a year to conduct discovery. In short, this first prayer for relief is now moot because Eliot has had both access to the documents and records, and ample time to conduct discovery. **(Ex. 9, pg.68).**

In section "(ii)", Eliot asks for court costs to be paid by the Parties not the Policy Owners. This prayer for relief does not seek the Policy Proceeds. In section "(iii)", Eliot states that he has asked the Probate Court in Florida to remove Ted Bernstein, Pam Simon, Donald Tescher and Robert Spallina from acting in any fiduciary capacity regarding the Estates of Simon or Shirley and Eliot asks this court for the identical relief. First, Donald Tescher and Robert Spallina are no longer parties to this action as their motion to dismiss Eliot's claims was granted. **(SoF, ¶16, ¶17, and ¶22)** Second, this Court has no jurisdiction over the Estates of Simon and Shirley Bernstein as those matters are being administered and litigated in Palm Beach County, Florida. *Dragen v. Miller*, 679 F.2d 712 (7th Cir. 1982). Third, as shown herein, Eliot has no standing in the Estate matters. Fourth, Ted Bernstein was cleared of any wrongdoing and his role as Trustee was confirmed in the Probate Actions. (cite). But more to the point, once again Eliot's third prayer for relief does not seek the Policy Proceeds. **(Ex. 9, pg. 68).**

In section "(iv)" Eliot complains of parties abusing their fiduciary duty and demands that such parties be required to retain non-conflicted counsel. Although this prayer is vague, it appears to be an attempt to have counsel for Movants disqualified. This prayer for relief was previously denied by Judge Amy St. Eve when she denied Eliot's motion to disqualify counsel **(Dkt. #91)**. And again, this prayer for relief also makes no mention of the Policy Proceeds. **(Ex. 9, pg.69).**

In section “(v)” Eliot asks the court to take judicial notice of the crimes alleged in his complaint and to use its court powers to “prevent any further crimes.” This prayer for relief is so vague on its face that it would be impossible for this court to grant or enforce the relief sought. No specific redress is requested, and more to the point no demand is made for the Policy Proceeds. **(Ex. 9, pg.70)**. In section “(vi)” Eliot asks for permission to obtain ECF access. Movants have been receiving Eliot’s pleadings via ECF, and the ECF timestamps on Eliot’s pleadings indicate he has access. In section (vii) Eliot asks for leave to amend his claims. None of these prayers for relief seek the Policy Proceeds. **(Ex. 9, pg.70)**.

In section (viii), Eliot seeks \$8 million, plus punitive damages, attorneys’ fees and costs. Eliot’s Claims contains no allegations of fact regarding the damages alleged that have any reasonable relation to the \$8 million plus punitive damages award he seeks. And the amount he seeks certainly bears no relation to the amount of Policy Proceeds on deposit which is approximately \$1.7 million. So Eliot’s final prayer for relief seeking money damages does not request either a determination that Eliot or his children are beneficiaries of the Policy Proceeds, nor does it make a demand for an award of the Policy Proceeds. **(Ex. 9, ¶70)**.

Eliot’s Claims are also based in part on his erroneous assumption that the determination of the beneficiary of the Policy proceeds must be made in Florida by the Probate Court, instead of the Northern District of Illinois where the Insurer filed its Interpleader and deposited the Policy Proceeds. Eliot misapprehends the fact that the Policy Proceeds are not part of the Probate Actions because they are non-probate assets whose beneficiary is determined according to the life insurance contract, the Policy. The Policy Proceeds vested in the beneficiary of the Policy immediately upon the death of the insured. *Bank of Lyons v. Schultz*, 22 Ill.App.3d 410, 318 N.E.2d 52 (1st Dist. 1974). Further, this Court has exercised its jurisdiction from the outset

of this matter and it was left unchallenged by the Insurer or any other party. In fact, it was the Insurer that removed the action to the Northern District from the Circuit Court of Cook County, and in so doing, the Insurer alleged and invoked this court's jurisdiction over this matter pursuant to 28 U.S.C. §1335. **(SoF ¶40, and Ex. 12)**. In addition, the matters and issues raised by Eliot all involve the Probate Action in Florida, and the Federal Probate Exception precludes this court's jurisdiction over such matters. *Storm v. Storm*, 328 F.3d 941 (7th Cir. 2003). What is also conspicuously absent from Eliot's Claims is any set of facts or references to documentation in the Insurer's records that support a claim to the Policy Proceeds on Eliot's own behalf or that of his children. **(SoF ¶28-¶31)**. In short, Eliot has not pled a conflicting claim to the Policy Proceeds such that this court could find that he or his children were named beneficiaries of the Policy on the records of the Insurer.

C. THE ESTATE OF SIMON BERNSTEIN HAS INTERVENED AND IS ADEQUATELY REPRESENTED.

Eliot's Claims make reference to the fact that the Estate of Simon Bernstein may be entitled to the Policy Proceeds. But as determined by the Probate Court, Eliot is not a beneficiary and has no standing to act on behalf of the Estate or participate at all in the Probate litigation in Florida. **(SoF, ¶33-¶34)**. The Estate is already adequately represented in the instant litigation by its personal representative and local counsel. **(SoF, ¶25)**. Also, the interests of Eliot's children in the Estate are now being represented solely by the guardian ad litem. **(SoF, ¶33-¶34)**.

D. THE RECENT ORDERS ENTERED IN THE PROBATE ACTIONS, BARRING ELIOT FROM THE ESTATE PROCEEDINGS AND STRIKING HIS PLEADINGS, ALSO EFFECT TO BAR ELIOT'S PRESENCE IN THE INSTANT LITIGATION ACCORDING TO THE DOCTRINE OF COLLATERAL ESTOPPEL.

Judge John L. Phillips in the Probate Actions entered the December, 2015 Order and the April, 2016 Orders which determined that the testamentary documents at issue in Probate Actions were valid and genuine. (SoF, ¶¶33-¶34). The Probate Orders bar Eliot from the Probate Actions to represent his own interests, and appoint a guardian ad litem to represent the interests of Eliot's children in their parents' stead. Eliot has filed separate appeals of the Probate Orders. Despite Eliot's pending appeals, the doctrine of collateral estoppel applies, and acts to settle material issues in the instant litigation. The Probate Orders entered after trial include findings that (i) Eliot is not beneficiary of the Estate of Simon Bernstein; (ii) appoint a guardian ad litem for Eliot's children; and (iii) Eliot has no standing in the Probate Actions on behalf of himself, the Estate or his children.

In *Innkeepers Telemanagement v. Hummert*, the court set forth the four elements that must be satisfied before collateral estoppel may be applied: (i) the issue sought to be precluded must be the same as that involved in the prior action, (ii) the issue must have been actually litigated, (iii) the determination of the issue must have been essential to the final judgment, and (iv) the party against whom estoppel is invoked must be fully represented in the prior action. *Innkeepers Telemanagement v. Hummert Management Group*, 841 F.Supp. 241 (N.D.Ill., 1993).

Here, all four elements apply. First, the issue Movants seek resolve by the application of collateral estoppel pertains to Eliot's standing vis-à-vis the Estate of Simon Bernstein. Plaintiffs' seek to have this court declare that Eliot is collaterally estopped from (i) asserting any claims here based on his now debunked theory that Eliot is a beneficiary of the Estate or a Simon

Bernstein testamentary trust at issue in the Probate Actions; (ii) asserting claims on behalf of the Estate for the same reasons; and (iii) asserting any claims on behalf of his children as they are now represented by a guardian ad litem in the Estate matters. Both Probate Orders on their face note that the determinations were made following a trial on the issues. Eliot appeared at the trial and chose to represent himself pro se'. The trial leading to the Probate Orders is sufficient to satisfy both the "actually litigated" and "fully represented" elements required to apply the doctrine of collateral estoppel. *Id* at pg. 246.

Collateral estoppel is also appropriate in situations such as here where not all the parties asserting estoppel were parties in the previous action, so long as the party to be estopped was a party to that action. Here, Eliot is the party to be estopped and Eliot was a party and appeared pro se' in the Probate Actions including at the trial leading to the final orders. *Id* at p. 246 citing *Blonder-Tongue Lab., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 349-350, 91 S.Ct. 1434, 1453, 28 L.E.2d 788 (1971). The fact that these final orders are on appeal does not prevent the application of collateral estoppel. *Innkeepers Telemanagement*, 841 F.Supp. at p.246 citing *Cohen v. Bucci*, 103 B.R. 927, (N.D.Ill. 1989), aff'd 905 F.2d 1111 (7th Cir. 1990). See also, the following string of citations from *Hazel v. Curtis-Wright Corp.*, 1992 WL 436236 (S.D. Ind., 1992):

The overwhelming majority rule in the federal courts is that a judgment may be given res judicata effect during the pendency of an appeal. See, e.g., *Erebia v. Chrysler Plastic Products Corp.*, 891 F.2d 1212, 1215 n. 1 (6th Cir.1989); *Robi v. Five Platters, Inc.*, 838 F.2d 318, 327 (9th Cir.1988); *Blinder, Robinson & Co. v. Securities and Exchange Commission*, 837 F.2d 1099, 1104 n. 6 (D.C.Cir.1988), cert. denied, 488 U.S. 869 (1988); *Wagner v. Taylor*, 836 F.2d 596, 598 (D.C.Cir.1987); *Taunton Gardens Co. v. Hills*, 557 F.2d 877, 879 n. 2 (1st Cir.1977); *Lee v. Criterion Insurance Co.*, 659 F.Supp. 813, 819-20 (S.D.Ga.1987); *Cohen v. Bucci*, 103 B.R. 927, 931 (N.D.Ill.1989), aff'd, 905 F.2d 1111 (7th Cir.1990); see also 18 C. WRIGHT, A. MILLER, E. COOPER, *FEDERAL PRACTICE AND PROCEDURE* § 4433 AT 308 (West 1981) ("established rule in the

federal courts is that a final judgment retains all of its res judicata consequences pending decision of the appeal”).

Moreover, the Seventh Circuit has previously subscribed to the majority rule that res judicata can operate despite a pending appeal. See *Kurek v. Pleasure Driveway & Park District*, 557 F.2d 580, 595 (7th Cir.1977), vacated on other grounds, 435 U.S. 992 (1978); see also *Grantham v. McGraw–Edison Co.*, 444 F.2d 210, 217 (7th Cir.1971) (“[t]he pendency of the ... late filed appeal.... did not detract from the conclusive effect of ... judgment”). In *Kurek* the court recited that, the federal rule is that the pendency of an appeal does not suspend the operation of an otherwise final judgment as ... collateral estoppel, unless the appeal removes the entire case to the appellate court and constitutes a proceeding de novo. *Id.* at 596 (quoting 1B MOORE'S FEDERAL PRACTICE ¶ 0.416[3] at 2254 (2d ed. 1974).

E. Movants’ motion as to all Third-Party Defendants added to this litigation by Eliot’s Claims, should also be granted for the reasons set forth by Judge St. Eve in her Order dismissing Tescher & Spallina.

. The upshot of Judge St. Eve’s Order dismissing Eliot’s Claims as to Tescher & Spallina was that Eliot was not an original defendant to Plaintiff’s First Amended Complaint, but instead was brought into this litigation by virtue of his appearance in response to the Insurer’s interpleader action. As such, Judge St. Eve noted, Eliot faces no liability in this action. And “Rule 14 limits a defendant to joining third-parties that share or supersede the defendant’s liability to the plaintiff.” (SoF 16. Dkt. #106, at p.3, March 17, 2014 Order citing *Metlife Investors USA Ins. Co. v. Ziedman*, 734 F.Supp2d 304, 310 (E.D.N.Y. 2010).

Judge St. Eve dismissed Tescher & Spallina pursuant to Rule 14, finding Eliot was not authorized to bring his third-party claims against Tescher & Spallina in the instant litigation. The causes of action brought against Tescher & Spallina are identical to the ones brought against the remaining third-party defendants. Thus, all of the third-party defendants are in the same posture as Tescher & Spallina were prior to their dismissal, and are entitled to summary judgment for the same reasons set forth by Judge St. Eve.

F. Eliot's Claims must fail he has failed to allege sufficient facts to prove damages, a necessary element to all of Eliot's Claims.

Because Eliot's prayers for relief do not seek the Policy Proceeds, Eliot has pled no claim to the Policy Proceeds. It has recently been determined by the Probate Orders that Eliot has no beneficial interest in the Estate, and has no standing in the Probate Actions involving the Estate. It follows that Eliot lacks standing to pursue claims on the behalf of the Estate in the instant litigation as well. And, Eliot has no standing to represent the interests of his children in the Estate since a guardian ad litem has now been appointed to act on their behalf. Each of Eliot's seven causes of action requires proof of the element of damages. Because Eliot cannot show that he sustained damages or that he has standing to assert damages on behalf of his children or the Estate, all of Eliot's Claims fail.

Plaintiff's claims for fraud dismissed for failing to show fraud caused damages. *U.S. for use of Ascher Brothers Co. v. American Home Assurance Co.*, 2013 WL 1338020 (N.D.ILL, 2003). Plaintiff's claim for legal malpractice dismissed for failing to show damages. *Northern Illinois Emergency Physicians v. Landau et. al.*, 216 Ill.2d 294, 837 N.E.2d 99, 297 Ill.Dec. 319 (Ill. 2005). Plaintiff's claim for breach of fiduciary duty dismissed for failing to show damages. *Sadler v. Retail Properties of America, Inc.*, 2014 WL 2598804 (not reported in F. Supp.2d), citing *Erica P. John Fund, Inc. v. Halliburton Co.*, — U.S. —, 131 S.Ct. 2179, 2183 (2011), *Lutkauskas v. Ricker*, 998 N.E.2d 549, 560 (1st Dist., 2013).

Plaintiff's claim for legal malpractice dismissed for failing to show damages. *Northern Illinois Emergency Physicians v. Landau et. al.*, 216 Ill.2d 294, 837 N.E.2d 99, 297 Ill.Dec. 319 (Ill. 2005). And, like legal malpractice claims, common law negligence claims require proof of breach of a duty of reasonable care, and damages caused by that breach. A complainant must have suffered an injury or damages in order to sustain a cause of action for negligence. *Browning*

v. Eckland Consultants, Inc., 2004 WL 2687961 (1st Dist. 2004), *Chandler v. Illinois Central Railroad. Co.*, 207 Ill.2d 331, 798 N.E.2d 724, 278 Ill.Dec. 340 (Ill. 2003).

Eliot's cause of action for conversion fails for a similar reason in that one essential element to sustain a claim of conversion is to show an immediate unfettered right to the property allegedly converted. *Edwards v. City of Chicago*, 389 Ill. App. 3d 350, 353, 905 N.E.2d 897, 900, 329 Ill.Dec. 59, 62 (1st Dist. 2009). Eliot's conversion claim does not even contain an allegation of a specific asset or piece of property that was converted much less show an unfettered right of ownership to such property.

Eliot's Claim for abuse of process likewise fails. The Orders entered in the Probate Action have conclusively determined that Eliot had no property rights in the Estate or the testamentary trusts, and that the testamentary documents that Ted Bernstein submitted to the court were genuine, valid and binding. Unfortunately, the administration of those estates has been mired in litigation for the last three to four years. But, the elements for a claim of abuse of legal process is that (i) the allegedly abusive proceedings must have been instituted for an improper purpose, and (ii) there must have been an improper act in the prosecution of the proceedings. *Kumar v. Bornstein*, 354, Ill.App.3d, 159, 820 N.E.2d, 1167, 290 Ill.Dec. 100 (1st Dist. 1972), *Holiday Magic, Inc. v. Scott*, 4 Ill.App.3d 962, 282 N.E.2d 452 (1st Dist. 1972).

The purpose behind the Probate Actions instituted by Ted Bernstein and Teshcer & Spallina in Florida was to submit the testamentary documents of Simon and Shirley Bernstein to probate in Florida and to administer their estates and trusts. Here, the proceedings were filed by the named beneficiary of a life insurance policy to pursue a death claim against a life insurer for the Policy Proceeds. Additionally, after trial in the Probate Actions, Ted Bernstein was cleared of any wrong-doing, and none of the other remaining third-party defendants were present at the

trial or mentioned in the Probate Orders. So, Eliot's abuse of legal process claims fail for similar reasons in that Eliot has not and cannot show an improper purpose for the filing of the proceedings alleged in Eliot's Claim for abuse of process. Also, under Illinois law, elements for abuse of process are strictly construed because the tort is disfavored. *Id.*

Eliot's final cause of action for civil conspiracy fails to adequately identify what the underlying tort or wrongful act of the conspirators was exactly. Presumably, Eliot is alleging a conspiracy involving two or more persons committing one of the other counts pled by Eliot. Since Movants have shown that none of those underlying counts can survive summary judgment, the conspiracy count must likewise fail.

To sum up, Eliot's Claims set forth no direct claims on his own behalf or on behalf of his children to the Policy Proceeds. Eliot has no standing to make a claim on behalf of the Estate. It has been determined in the Probate Action that Eliot is not a beneficiary of the Estate. The allegations of loss by Eliot – as convoluted as they are – all rely on the supposition that Eliot has a beneficial interest in the Estate and that the actions of those Eliot has sued somehow deprived him of the property he would have inherited. So, the fatal problem for Eliot is that it has been determined that he is not a beneficiary of the Estate in the first place. In other words, Eliot has no viable claim against Movants because he has not and cannot show that Movants have deprived Eliot of anything.

G. A SEPARATE AND DISTINCT REASON EXISTS FOR GRANTING SUMMARY JUDGMENT IN FAVOR OF STP ENTERPRISES, INC. AS TO ELIOT'S CLAIMS, AND THAT IS ELIOT HAS MADE NO ALLEGATIONS OF WRONGDOING, -- OR RIGHT-DOING FOR THAT MATTER – PERTAINING TO STP. STP IS SIMPLY ABSENT.

Eliot's Claims were filed on September 22, 2013, over two and one-half years ago. Eliot had over a year to conduct discovery, and discovery has been closed for over one year. Yet, Eliot's Claims only reference STP in a preliminary identifying, and jurisdictional paragraphs.

The first 136 paragraphs of Eliot's Claims contain the allegations of fact that purportedly support his Claims which are then set out in conclusory fashion and simply lump all counterdefendants, cross-defendants, and third-party defendants together without delineating which parties are the proper party to each specific claim. For example, Eliot's Claims as written name all third-party defendants as being liable for his Legal Malpractice Claim, yet several of these same parties are not even attorneys or law firms, much less Eliot's attorney. Eliot does not allege that STP is an attorney or law firm yet it is named a third-party defendant to his legal malpractice claim. In fact, STP appears nowhere in the 136 paragraphs of factual allegations, Eliot has failed to set forth any facts at all attributable to STP. Thus, summary judgment is certainly warranted in favor of STP.

CONCLUSION

For all of the foregoing reasons, Movants' motion for summary judgment as to each and every one of Eliot's Claims should be granted in its entirety.

Respectfully Submitted,

/s Adam M. Simon

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff,)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Counter-Defendant,)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN,)

Third-Party Defendants.)

**Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

**INTERVENOR’S MOTION FOR
SUMMARY JUDGMENT**

Filer:
Brian O’Connell, as Personal Representative
of the Estate of
Simon L. Bernstein, Intervenor.

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff,)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95)

Cross-Defendant,)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

BRIAN M. O'CONNELL, as Personal)
Representative of the Estate of)
Simon L. Bernstein,)

Intervenor.)

_____)

INTERVENOR’S MOTION FOR SUMMARY JUDGMENT

Intervenor Brian M. O’Connell, Personal Representative of the Estate of Simon L. Bernstein (“Estate”), pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, respectfully moves the Court for summary judgment as to his Complaint for Declaratory Judgment (ECF No. 112) and Counts II and III of Plaintiffs’ First Amended Complaint (ECF No. 73). In support of this Motion, the Estate states as follows:

1. This is an interpleader action concerning the distribution of the proceeds from a life insurance policy which insured the life of Simon Bernstein (“Policy”). *Order* at 1 (ECF No. 220).

2. In the absence of a valid designated beneficiary under the Policy, the proceeds are payable to the Estate as a matter of both Illinois and Florida law. *See New York Life Ins. Co. v. RAK*, 180 N.E.2d 470, 470-71 (Ill. 1962); *Harris v. Byard*, 501 So.2d 730, 734 (Fla. Dist. Ct. App. 1987).

3. Plaintiffs claim that the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995 (“1995 Trust”) is a valid designated beneficiary under the Policy.

4. Because Plaintiffs have produced no executed original or executed copy of the 1995 Trust, they must prove the 1995 Trust by clear and convincing evidence. *Order* at 3 (ECF No. 220).

5. In deciding this motion for summary judgment, the evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in his favor, but the Court must then determine whether the evidence is of insufficient caliber or quantity for a rational trier of fact to find that Plaintiffs have proven the 1995 Trust by clear and convincing evidence. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254-55 (1986).

6. Plaintiffs attempt to establish Simon Bernstein's intent to create the 1995 Trust and the terms of the 1995 Trust primarily through the testimony of David Simon and Ted Bernstein. Under Illinois' Dead Man's Act (735 ILCS 5/8-201), however, Plaintiff Ted Bernstein is an "adverse party" to the Estate, and both he and David Simon are "interested parties." As a result, their testimony is inadmissible in this proceeding. *Order* at 3 (ECF No. 220).

7. Without the testimony of David Simon and Ted Bernstein, the two materially-different documents which David Simon testified are unexecuted drafts of the 1995 Trust, along with the other circumstantial evidence, is of insufficient caliber and quantity to enable a reasonable trier of fact conclude that Plaintiffs have established an intent to create the 1995 Trust and the terms of the 1995 Trust by clear and convincing evidence.

8. In any event, even if their testimony were not barred by the Dead Man's Act, that testimony along with the other circumstantial evidence is inconsistent and contradictory to such a degree that it is *still* of insufficient caliber and quantity to enable a reasonable trier of fact conclude that Plaintiffs have established an intent to create the 1995 Trust and the terms of the 1995 Trust by clear and convincing evidence.

9. The Estate incorporates herein by reference all facts, arguments and authority in *Intervenor's Local Rule 56.1(a)(2) Memorandum of Law In Support of Summary Judgment* and *Intervenor's Local Rule 56.1(a)(3) Statement of Undisputed Material Facts*, both of which are being contemporaneously filed herewith.

10. Based on the foregoing, as further detailed in its statement of undisputed facts and memorandum of law, the Estate has established that there is no triable issue of fact and the Estate

is entitled to judgment as a matter of law on its Complaint for Declaratory Judgment and Counts II and III of Plaintiffs' First Amended Complaint.¹

WHEREFORE, Intervenor Brian M. O'Connell, Personal Representative of the Estate of Simon L. Bernstein, respectfully requests that the Court enter an Order:

- A. Granting summary judgment in in his favor and against Plaintiffs on Counts II and III of Plaintiffs' First Amended Complaint (ECF No. 73);
- B. Granting summary judgment in his favor and against Plaintiffs on his Complaint for Declaratory Judgment (ECF No. 112) in its entirety;
- C. Declaring that there is no valid beneficiary designated under the Policy;
- D. Declaring that the proceeds of the Policy are payable to the Estate of Simon L. Bernstein; and
- E. Providing for such other and further relief as the Court deems just and proper.

Dated: May 25, 2016

BRIAN M. O'CONNELL, PERSONAL REPRESENTATIVE
OF THE ESTATE OF SIMON L. BERNSTEIN, Intervenor

By: /s/ James J. Stamos
One of Intervenor's Attorneys

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¹ On February 18, 2014, Count I of the First Amended Complaint against Heritage Union Life Insurance Company was dismissed with prejudice. *Order* (ECF No. 101); *Order* at 1-2 (ECF No. 220).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing **Intervenor's Motion for Summary Judgment** to be served upon all registered E-Filers via electronic filing using the CM/ECF system, and to be served upon the following persons via U.S. mail, proper postage prepaid:

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Jill Marla Iantoni
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on this 25th day of May, 2016.

/s/ James J. Stamos

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff,)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Counter-Defendant,)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN,)

Third-Party Defendants.)

**Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

**INTERVENOR’S LOCAL RULE
56.1(a)(2) MEMORANDUM OF LAW IN
SUPPORT OF SUMMARY JUDGMENT**

Filer:
Brian O’Connell, as Personal Representative
of the Estate of
Simon L. Bernstein, Intervenor.

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff,)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant,)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

BRIAN M. O'CONNELL, as Personal)
Representative of the Estate of)
Simon L. Bernstein,)

Intervenor.)

**INTERVENOR'S LOCAL RULE 56.1(a)(2) MEMORANDUM
OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Intervenor Brian M. O’Connell, Personal Representative of the Estate of Simon L. Bernstein (“Estate”), for his Memorandum of Law in support of Motion for Summary Judgment pursuant to Local Rule 56.1(a)(2), states as follows:

INTRODUCTION

Under well-established law, the Estate is the default beneficiary of the insurance Policy and entitled to the proceeds absent a valid designated beneficiary. The sole question presented to this Court is whether Plaintiffs can meet their burden of proving by clear and convincing evidence the existence and terms of a purported 1995 Trust which they claim is the valid designated beneficiary of the Policy. Discovery is complete. The only evidence Plaintiffs have to establish the existence and terms of the 1995 Trust is the self-interested testimony of David Simon and Ted Bernstein, which is barred by the Illinois Dead Man’s Act, and a variety other of circumstantial evidence which, as a matter of law, cannot satisfy the “clear and convincing evidence” standard—either on its own or in conjunction with the testimony of David Simon and Ted Bernstein. As a consequence, Plaintiffs cannot meet their burden, and the Estate is entitled to summary judgment.

JURISDICTION AND VENUE

The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1335 (interpleader). The insurer invoked such jurisdiction when it filed its interpleader action after removing this action from the Circuit Court of Cook County. Venue is proper in this district because a substantial part of the events giving rise to the claims occurred in Cook County, Illinois. The Policy was applied for and delivered in Cook County, and the initial Policy owner was a bank in Cook County, acting as trustee for a trust domiciled in Cook County. *Intervenor’s Local Rule 56.1(a)(3) Statement of Undisputed Material Facts* (“SoF”) ¶¶ 13-16.

LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Spurling v. C & M Fine Pack, Inc.*, 739 F.3d 1055, 1060 (7th Cir. 2014). A defendant moving for summary judgment satisfies its burden “(1) by affirmatively disproving the plaintiff’s case by introducing evidence that, if uncontroverted, would entitle the movant to judgment as a matter of law (traditional test), or (2) by establishing that the nonmovant lacks sufficient evidence to prove an essential element of the cause of action (*Celotex* test).” *Williams v. Covenant Med. Ctr.*, 737 N.E.2d 662, 668 (Ill. App. Ct. 2000) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)) (internal citations omitted). “If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless, and the moving party is entitled to summary judgment as a matter of law.” *Celotex*, 477 U.S. at 331 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

Further, “in ruling on a motion for summary judgment, the judge must view the evidence through the prism of the substantive evidentiary burden.” *Anderson*, 477 U.S. at 254. Here, Plaintiffs have the burden of proving the 1995 Trust by clear and convincing evidence, which evidence cannot be “capable of reasonable explanation upon any other theory” and “must be so unequivocal and unmistakable as to lead to only one conclusion.” *Order* at 3 (ECF No. 220). “[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Anderson*, 477 U.S. at 249-50. Under these standards, the Estate is entitled to judgment as a matter of law.

ARGUMENT

The Estate is entitled to summary judgment for the following reasons:

- (a) The Estate, as default beneficiary, is entitled to the Policy proceeds under both Illinois and Florida law unless Plaintiffs can prove the 1995 Trust by clear and convincing evidence.
- (b) Plaintiffs are attempting to prove the existence and terms of the 1995 Trust through the testimony of David Simon and Ted Bernstein, who are “interested parties” under Illinois’ Dead Man’s Act. Their testimony is inadmissible in this proceeding, and Plaintiffs cannot otherwise establish the 1995 Trust by clear and convincing evidence.
- (c) Even if the testimony of David Simon and Ted Bernstein were not barred by the Dead Man’s Act, the circumstantial evidence is inconsistent and contradictory to such a degree that Plaintiffs still cannot prove the 1995 Trust by clear and convincing evidence.

I. The Estate, As The Default Beneficiary, Is Entitled To The Policy Proceeds Because Plaintiffs Cannot Prove The Existence of The Purported 1995 Trust.

In the absence of a valid designated beneficiary, the Policy proceeds are payable to the Estate as a matter of both Illinois and Florida law. *See New York Life Ins. Co. v. RAK*, 180 N.E.2d 470, 470-71 (Ill. 1962) (where beneficiary no longer existed, proceeds of life insurance policy passed to the decedent’s estate); *Harris v. Byard*, 501 So.2d 730, 734 (Fla. Dist. Ct. App. 1987) (in the absence of a named beneficiary, no basis in law for directing payment of insurance policy proceeds to anyone other than decedent’s estate for administration and distribution).

Here, as of the Insured’s date of death, the designated primary beneficiary of the Policy was LaSalle National Trust, N.A. as Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust. SoF ¶ 20. The S.B. Lexington, Inc. Employee Death Benefit Trust ceased to exist prior to the Insured’s death, and neither it nor LaSalle National Trust, N.A. as Trustee thereof has made any claim to the Policy proceeds. SoF ¶¶ 20-21. Thus, there is no valid designated primary beneficiary of the Policy.

The contingent beneficiary was the “Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995” (the “1995 Trust”). SoF ¶ 20. Plaintiffs admit that they have been unable to locate

an executed original or executed copy of the 1995 Trust document. *See* SoF ¶ 44. Nonetheless, in Count II, Plaintiffs seek a declaration that the 1995 Trust was established on or about June 21, 1995 and is entitled to the Policy proceeds, the trustee is Ted Bernstein and the beneficiaries are Simon Bernstein’s five children. *First Amended Complaint*, Count II (ECF No. 73). Alternatively, Count III seeks a declaration that the Policy proceeds are being held in a resulting trust for the benefit of Plaintiffs and Eliot Bernstein. *Id.*, Count III. The only available evidence, however, demonstrates that Plaintiffs cannot prove Simon Bernstein created or intended to create the 1995 Trust, nor can they prove its terms. Because Plaintiffs cannot establish the existence of the 1995 Trust, there exists no valid designated beneficiary under the Policy, and the proceeds are payable to the Estate. As a result, the Estate is entitled to judgment as a matter of law.

“In Illinois, creation of an express trust requires: (1) intent of the parties to create a trust, which may be shown by a declaration of trust by the settlor or by circumstances which show that the settlor intended to create a trust; (2) a definite subject matter or trust property; (3) ascertainable beneficiaries; (4) a trustee; (5) specifications of a trust purpose and how the trust is to be performed; and (6) delivery of the trust property to the trustee.” *Eychaner v. Gross*, 779 N.E.2d 1115, 1131 (Ill. 2002). “If any one of the necessary elements is not described with certainty, no trust is created.” *Id.*

“[A] resulting trust is created by operation of law and arises out of a presumed intention of the parties as evidenced by their acts and conduct.” *Kaibab Indus., Inc. v. Family Ready Homes, Inc.*, 444 N.E.2d 1119, 1126 (Ill. App. Ct. 1983). Where a party does not establish the intent necessary to create an express trust, the Court cannot impose a resulting trust. *See Estate of Wilkening*, 441 N.E.2d 158, 164 (Ill. App. Ct. 1982) (“By definition, a resulting trust is imposed by operation of law to effectuate the intent of the parties. ... [T]he Estate did not establish the

requisite intent necessary to create an express trust. Obviously, without the established intent, the court cannot impose a trust that operates to effectuate that intent.”) (internal citations omitted).

Because they are unable to produce an executed copy of the 1995 Trust, Plaintiffs rely on parol evidence to prove the existence and terms of the 1995 Trust. *Order* at 3 (ECF No. 220).

However, one seeking to establish an express trust by parol evidence bears the burden of proving the trust by clear and convincing evidence. The acts or words relied upon must be so unequivocal and unmistakable as to lead to only one conclusion. If the parol evidence is doubtful or capable of reasonable explanation upon any other theory, it is not sufficient to establish an express trust.

Eychaner, 779 N.E.2d at 1135; *Order* at 3 (ECF No. 220); *All. to End Repression v. City of Chicago*, 74 C 3268, 2000 WL 562480, *5 (N.D. Ill. May 8, 2000) (evidence is clear and convincing “only if the material offered instantly tilted the evidentiary scales in the affirmative when weighed against the evidence offered in opposition”) (internal quotes omitted). Likewise, the intent necessary to support a resulting trust must be established by clear and convincing evidence. *Kohlhaas v. Smith*, 97 N.E.2d 774, 776 (Ill. 1951). In light of the facts taken most favorably to the non-moving parties, Plaintiffs cannot possibly satisfy this standard.

A. Plaintiffs Cannot Prove the Existence and Terms of the 1995 Trust by “Clear and Convincing Evidence” Because the Testimony of David Simon and Ted Bernstein is Barred by the Dead Man’s Act.

Plaintiffs have no evidence that anyone actually witnessed Simon Bernstein execute the purported 1995 Trust or that anyone possesses an executed copy. To establish the intent to create the 1995 Trust, Plaintiffs instead rely primarily on the testimony of David Simon and Ted Bernstein that Simon Bernstein executed some form of the documents attached to Plaintiffs’ prior summary judgment motion as Exhibits 15 and 16, which are purportedly unexecuted drafts of the 1995 Trust. As this Court already held, “[h]owever, the testimony of David Simon and Ted Bernstein, along with the testimony of other Plaintiffs, is barred by the Illinois Dead Man’s Act to

the extent it relates to conversations with the deceased or to any events which took place in the presence of the deceased.” *Order* at 3 (ECF No. 220) (citing 735 ILCS 5/8-201). The Court’s holding was absolutely correct and remains so.

David Simon is the sole witness who claims to have seen the executed version of the purported 1995 Trust, and he testified that this took place during a meeting with Simon Bernstein. SoF ¶ 52. He also testified that he had a conversation with Simon Bernstein about the 1995 Trust and took notes from that conversation on Plaintiffs’ Exhibit 15. SoF ¶ 45. The only other witness who offered testimony about the terms of the 1995 Trust is Ted Bernstein, who attests that Simon Bernstein told him he would be named trustee once the 1995 Trust was formed. SoF ¶¶ 54-55.¹

The testimony of both witnesses is barred by the Dead Man’s Act, which provides, in pertinent part, that “no adverse party or person directly interested in the action shall be allowed to testify on his or her own behalf to any conversation with the deceased ... or to any event which took place in the presence of the deceased.” 735 ILCS 5/8-201. Plaintiff Ted Bernstein is an “adverse party” to the Estate and “directly interested” because he will receive 20% of the interpleaded Policy proceeds if Plaintiffs prevail. *See* SoF ¶¶ 3-4. Thus, the Dead Man’s Act bars Ted Bernstein from testifying about any conversation with Simon Bernstein or events which took place in his presence.

In addition, Plaintiffs’ most critical witness, David Simon, is Pamela Simon’s spouse. SoF ¶ 6. Plaintiff Pamela Simon is not only an “adverse party,” but is also “directly interested” because she will receive 20% of the Policy proceeds if Plaintiffs prevail. SoF ¶¶ 5, 7. As a result, the Dead Man’s Act renders David Simon incompetent to testify about any conversation with or events which took place in the presence of Simon Bernstein, such as David Simon purportedly reviewing

¹ In addition to being barred by the Dead Man’s Act, the testimony of David Simon and Ted Bernstein is also inadmissible hearsay. *See infra* § I(B)(1).

the executed 1995 Trust document with Simon Bernstein. *See In re Estate of Babcock*, 473 N.E.2d 1316, 1319 (Ill. 1985). The Dead Man’s Act also bars David Simon from testifying about his notes. *See* 735 ILCS 5/8-201; *Theofanis v. Sarrafi*, 791 N.E.2d 38, 50-53 (Ill. App. Ct. 2003).²

“This dramatically limits the testimony upon which Plaintiffs may rely in support of their [claims regarding the existence and terms 1995 Trust], and leaves the Court without any direct testimony describing the Trust’s creation.” *Order* at 3 (ECF No. 220). Without such testimony, the two purported drafts of the 1995 Trust document cannot establish the existence and terms of the 1995 Trust by clear and convincing evidence. *See id.* (“those documents offer Plaintiffs little support in the absence of the testimony from David Simon and Ted Bernstein describing how some form of those exhibits was executed by Simon Bernstein”).

Indeed, the mere existence of those two documents is not “so unequivocal and unmistakable as to lead to only one conclusion,” *i.e.* that Simon Bernstein intended to create the 1995 Trust and its terms were as set forth in the purported drafts, which are not even identical. Rather, the existence of those two documents is readily “capable of reasonable explanation upon any other theory” than an intent to create a trust with those terms—indeed, multiple theories—for example, that Simon Bernstein never actually saw the drafts or approved those terms, or he wound up creating the 1995 Trust with completely different terms than the drafts, or the purported drafts are not even drafts of the 1995 Trust.

In other words, Plaintiffs have no competent evidence upon which a trier of fact could find that Simon Bernstein executed anything, much less a document creating the 1995 Trust. Plaintiffs likewise have no evidence that would enable the factfinder to find that any such document

² The Dead Man’s Act likewise bars testimony by Plaintiffs Lisa Friedstein and Jill Iantoni, both of whom are “adverse” to the Estate and, like Ted and Pamela, “directly interested” because they will each receive 20% of the interpleaded Policy proceeds if Plaintiffs prevail. *See* SoF ¶¶ 8-10; 735 ILCS 5/8-201.

contained terms identical to the purported drafts or otherwise determine the actual or intended terms of the purported 1995 Trust. Therefore, Plaintiffs cannot carry their burden of proving the purported 1995 Trust by clear and convincing evidence. As a result, there is no valid designated beneficiary and the Policy proceeds are payable to the Estate, which is entitled to judgment as a matter of law. *See RAK*, 180 N.E.2d at 470-71 (where beneficiary no longer existed, proceeds of life insurance policy passed to the decedent's estate); *Harris*, 501 So.2d at 734 (in the absence of a named beneficiary, no basis in law for directing payment of insurance policy proceeds to anyone other than decedent's estate for administration and distribution).

B. Even If The Testimony of David Simon and Ted Bernstein Were Not Barred by the Dead Man's Act, There is Still Not "Clear and Convincing Evidence" Establishing the Existence and Terms of the 1995 Trust.

The Estate is entitled to summary judgment even if the testimony of David Simon and Ted Bernstein were not barred by the Dead Man's Act because the caliber and quality of that evidence and the other circumstantial evidence, even taken most favorably to the non-moving parties, is insufficient to allow a rational trier of fact to find an intent to create the 1995 Trust and determine its specific terms by clear and convincing evidence. In deciding the Estate's motion for summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *See Anderson*, 477 U.S. at 255. But the Court must then determine whether that evidence "is of insufficient caliber or quantity" to allow a rational finder of fact to find that Plaintiffs have proven the 1995 Trust by clear and convincing evidence. *Id.* at 254. Again, clear and convincing evidence "must be so unequivocal and unmistakable as to lead to only one conclusion," and "[i]f the ... evidence is doubtful or capable of reasonable explanation upon any other theory, it is not sufficient." *Eychaner*, 779 N.E.2d at 1135; *Kohlhaas*, 97 N.E.2d at 776; *All. to End Repression*, 2000 WL 562480 at *5.

Here, the available evidence demonstrates that Plaintiffs cannot satisfy the foregoing standard. Even assuming, *arguendo*, that the Dead Man's Act did not bar the testimony of David Simon and Ted Bernstein, that testimony and the other evidence does not unequivocally or unmistakably prove the intent of Simon Bernstein to create the 1995 Trust or the terms of that Trust. As detailed below, most of the testimony of David Simon and Ted Bernstein is hearsay, even if not barred by the Dead Man's Act. And the undisputed evidence about the events leading up to the "discovery" of the drafts are utterly inconsistent with the existence of a 1995 Trust. These include the inconsistent provisions of the drafts themselves, the inconsistencies between the testimony of the family as to what the drafts were to show, and what they do show, the failure of the family to discover those drafts for over a year despite supposedly exhaustive searches, and the conduct engaged in by the family, including David Simon and Ted Bernstein in considering and seeking to employ alternatives to a 1995 Trust to collect the proceeds.

1. The Inconsistent, Unexecuted Drafts of the 1995 Trust, and David Simon's and Ted Bernstein's Inconsistent Testimony About Them and the Trustee's Identity, Do Not Meet the "Clear and Convincing Evidence" Standard.

In place of an executed 1995 Trust document, Plaintiffs rely on two purported drafts of the 1995 Trust that are inconsistent with each other and with David Simon's testimony attempting to explain how those drafts came to be, which testimony is itself internally inconsistent. Plaintiffs' Exhibit 16, the earlier draft, lists the potential trustees as "Shirley, David, [illegible name]?" and the successor trustees as "Pam, Ted." SoF ¶ 46. The more-recent "draft" embodied by Plaintiffs' Exhibit 15, however, lists Shirley as trustee and David Simon as successor trustee. SoF ¶ 48. In contrast to Plaintiffs' Exhibits 15 and 16, when the purported 1995 Trust first made a claim to the insurance company, it represented that Plaintiffs' former attorney, Robert Spallina, was the trustee. SoF ¶ 29. Despite all of this, in the current proceeding Plaintiffs claim now that Ted Bernstein is

the trustee. *Order* at 6 (ECF No. 220).

Plaintiffs' evidentiary basis for claiming Ted Bernstein is the trustee is two-fold. First, David Simon's testimony implies that he saw the executed 1995 Trust which provided that Ted Bernstein was the trustee. SoF ¶ 52. This is classic hearsay, however, in that the out of court statement written in the document (*i.e.* that Bernstein is trustee) is being offered to prove the truth of that assertion. As such, David Simon's testimony on this point is inadmissible irrespective of the Dead Man's Act.

Second, Ted Bernstein claims that Simon Bernstein told Ted that he was forming a life insurance trust and Ted would be one of the trustees once the trust was formed. SoF ¶ 55. Ted Bernstein further testified that his assertion that he is trustee is also based on David Simon telling Ted that he was the trustee and Ted seeing his name handwritten as one of multiple potential trustees on a document David Simon told him was a draft of the 1995 Trust. SoF ¶¶ 54-57. As such, Ted Bernstein has no personal knowledge about whether he is trustee. Ted's claim that he is trustee is entirely based on inadmissible hearsay, *i.e.* the out of court statements, spoken by Simon Bernstein and David Simon and written in the purported draft of the 1995 Trust, that Ted is the trustee, which are being offered by Ted for their truth. Admissibility aside, this still cannot constitute clear and convincing evidence that Ted is the trustee because it is capable of reasonable explanation by many other theories, *e.g.* Simon Bernstein never formed the 1995 Trust or did but decided not to make Ted trustee, the information given to Ted by David Simon was not accurate.

Similarly, David Simon's explanation of how those purported drafts came to be, which is inconsistent with the drafts, and his internally inconsistent attempts to explain the discrepancies, are not the caliber and quantity of evidence that would enable a reasonable trier of fact to conclude that Plaintiffs have shown the existence and terms of the 1995 Trust by clear and convincing

evidence. For example, David Simon testified that the trustees and successor trustees listed in Plaintiffs' Exhibit 16 are his handwritten notes from a June 20, 1995 conversation with Simon Bernstein in which Simon Bernstein said he wanted his wife, Shirley, to be trustee and asked David Simon to be the successor trustee, to which David Simon agreed. SoF ¶ 45. In contrast to his testimony about the conversation, David Simon's handwritten notes of that conversation list multiple potential trustees followed by a "?" and list multiple successor trustees—none of whom is David Simon. *See* SoF ¶ 46.

David Simon also testified that he used those handwritten notes on Plaintiffs' Exhibit 16 to create Plaintiffs' Exhibit 15. SoF ¶ 47. Yet the trustees' names handwritten on Plaintiffs' Exhibit 16 are not the same as the trustee in Plaintiffs' Exhibit 15, and the successor trustee listed in Plaintiffs' Exhibit 15 is not even one of the two successor trustees whose names are handwritten on Plaintiffs' Exhibit 16. *See* SoF ¶¶ 46, 48.

Attempting to explain why the more recent draft (*i.e.* Plaintiffs' Exhibit 15) lists a different individual than the individual who Plaintiffs now claim is the successor trustee, David Simon testified at this deposition that, after agreeing himself to be successor trustee, he thought about it overnight and then asked Simon Bernstein to replace him sequentially with Simon Bernstein's children. SoF ¶¶ 49. In contrast, David Simon later attempted to support Plaintiffs' summary judgment motion by inconsistently attesting in his affidavit that he actually suggested that Simon Bernstein appoint Ted Bernstein as the only successor trustee. SoF ¶ 50. Not coincidentally, in this proceeding, Ted Bernstein is who Plaintiffs now claim was the trustee. This supposed trustee has never seen an executed copy of the 1995 Trust, and his only bases for claiming he is trustee are Simon Bernstein telling him before any Trust was ever even purportedly created, David Simon telling him it is so, and him having seen it written on a document that David Simon told him was

a draft of the purported 1995 Trust. SoF ¶¶ 54-57.

In sum, the purported drafts of the 1995 Trust have inconsistent terms, Plaintiffs have taken inconsistent positions about the identity of the trustee, and David Simon's internally inconsistent testimony, which is inconsistent with the terms of the purported drafts, is also inadmissible hearsay, like Ted Bernstein's testimony. This aspect of the evidence is of insufficient caliber and quantity to enable a rational trier of fact to conclude that Plaintiffs have proven by clear and convincing evidence both an intent to create the 1995 Trust and its terms.

2. David Simon's Testimony About the Discovery of the Purported Drafts of the 1995 Trust Does Not Contribute to Satisfying the "Clear and Convincing Evidence" Standard.

Plaintiffs' testimony about the circumstances under which the purported drafts of the 1995 Trust were supposedly discovered does not support the validity of those documents or their value in showing that Simon Bernstein intended to create a trust with those terms. Shortly after the death of Simon Bernstein in 2012, his family (including the Plaintiffs) conducted what was described as an "exhaustive search" for the 1995 Trust, and none was found. SoF ¶¶ 24-25. One year later, David Simon (with the help of his brother and counsel herein, Adam), searched his office and records in Chicago and purportedly located both a hard copy draft of the 1995 Trust and a version prepared on a word processor at the Simon Law Firm. *See* SoF ¶¶ 39-42.

Between the "exhaustive" search conducted in the aftermath of Simon Bernstein's death and the search conducted by the Simon brothers, however, Plaintiffs and their then-attorney, Robert Spallina, exchanged many emails referring to the inability to locate a trust document and addressing how best to extract the insurance proceeds from Heritage. SoF ¶¶ 32. David Simon was a participant in those email exchanges, yet in none of those emails did he relate a recollection of the critical fact that he drafted the 1995 Trust and saw the final executed version, which named

Ted Bernstein trustee. *See id.*; *Order* at 4-5 (ECF No. 220). Nor did it come to his mind to check his office files and his computer for this critical document. Those critical facts are also found nowhere in the original Complaint David Simon's brother filed in this action during that period. SoF ¶ 37. Apparently, David Simon inexplicably did not search his office and computer files for Plaintiffs' Exhibits 15 and 16 until one year later.

3. David Simon's Uncorroborated Testimony about the Creation of the 1995 Trust Does Not Help Plaintiffs Satisfy the "Clear and Convincing Evidence" Standard.

According to David Simon, Simon Bernstein took the draft 1995 Trust document to Hopkins & Sutter to be executed and the identity of the successor trustee on the executed version was changed when he saw the final version. SoF ¶¶ 48-52. This clearly implies that the document was revised at Hopkins & Sutter, and thus, the firm would have an electronic and possibly a hard copy of the final version of the document which was purportedly executed. David Simon testified that Foley & Lardner, the successor firm to Hopkins & Sutter, and other attorneys who broke away and started their own firm, were contacted to see if they had retained a copy of the 1995 Trust, but they did not. Oddly, David Simon has no idea who specifically was contacted or even whether it was him or someone else who contacted them. SoF ¶ 26; *Order* at 5 (ECF No. 220).

Perhaps more importantly, David Simon testified that after Simon Bernstein returned from executing the 1995 Trust, he assisted Simon Bernstein in preparing documents to be submitted to the insurer in order to give effect to the 1995 Trust and that he would have expected the insurer to retain copies of the documents. *See* SoF ¶ 53. Again, however, he cannot recall who called the insurer or with whom that person spoke, and the insurer retained no copies of documents relevant to the 1995 Trust. *Id.*; *Order* at 5-6 (ECF No. 220).

4. The Creation of the 2000 Trust is Inconsistent with the Existence of the 1995 Trust and the Notion That Ted Bernstein is the Trustee.

While Plaintiffs addressed the lack of an executed 1995 Trust document in their email exchanges, they also considered several other options for attempting to obtain the Policy proceeds from the insurer. One of the options was “using” the 2000 Trust, a trust that Simon Bernstein admittedly executed. SoF ¶¶ 27-28. Plaintiffs deliberated extensively over this option, exchanging numerous emails with their then-counsel, Robert Spallina, but this option was rejected because the 2000 Trust did not include Pamela Simon as a beneficiary. SoF ¶ 27. As an initial matter, the notion of Plaintiffs “using” the 2002 Trust to obtain the Policy proceeds is entirely inconsistent with Ted Bernstein’s supposed understanding that he was the trustee of a 1995 Trust. His participating in “using” the 2000 Trust to obtain Policy proceeds of which the 1995 Trust was supposedly the beneficiary would have breached his fiduciary duties as trustee of the 1995 Trust.

More importantly, however, the existence of the 2000 Trust is also critical because it identifies the proceeds of the insurance policy at issue here as an asset of *that* Trust, but does not refer to the existence of the alleged 1995 Trust, which the 2000 Trust would have superseded. SoF ¶¶ 58-59; *Order* at 5 (ECF No. 220).³ No rational trier of fact could conclude that Simon Bernstein 1) executed the 2000 Trust, 2) omitting any reference to a 1995 Trust, but 3) actually *intended* for the Policy proceeds identified as an asset of the 2000 Trust not to pass in accordance with the terms of that Trust and 4) instead to pass in accordance with the terms of a trust he supposedly created five years earlier. And, on this evidence, no rational trier of fact could determine the specific terms of the 1995 Trust by clear and convincing evidence.

³ It is also significant that no subsequent estate planning document executed by Simon Bernstein revokes, or even refers to the existence of, a purported 1995 Trust. *See* SoF ¶¶ 60-65.

All of the evidence that exists in this case taken as true, and considered most favorably to the Plaintiffs, nonetheless presents a confused, contradictory and inconsistent series of events with regard to whether the 1995 Trust ever existed and what its terms were. Even if a trier of fact believed that both David Simon and Ted Bernstein were telling the truth, *i.e.* believed what they were saying, the Court must consider that testimony with all of the other circumstantial evidence, not one item of which supports the notion that Simon Bernstein intended to create the 1995 Trust or that anyone knows its terms. As a consequence, no reasonable trier of fact could conclude that this amalgam of evidence proves the existence and terms of a 1995 Trust by clear and convincing evidence.

CONCLUSION

For the foregoing reasons, the Estate respectfully requests that the Court grant summary judgment in favor of the Estate on its Complaint for Declaratory Judgment (ECF No. 112) and on Plaintiffs' First Amended Complaint (ECF No. 73).

Dated: May 25, 2016

BRIAN M. O'CONNELL, PERSONAL REPRESENTATIVE
OF THE ESTATE OF SIMON L. BERNSTEIN, Intervenor

By: /s/ James J. Stamos
One of Intervenor's Attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing **Intervenor's Local Rule 56.1(a)(2) Memorandum of Law in Support of Summary Judgment** to be served upon all registered E-Filers via electronic filing using the CM/ECF system, and to be served upon the following persons via U.S. mail, proper postage prepaid:

Lisa Sue Friedstein
2142 Churchill Lane
Highland Park, IL 60035
Lisa@friedsteins.com
Pro Se Litigant

Jill Marla Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Pro Se Litigant

on this 25th day of May, 2016.

/s/ James J. Stamos

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
 INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
 COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
 COMPANY)

Counter-Plaintiff,)

v.)

SIMON BERNSTEIN IRREVOCABLE)
 INSURANCE TRUST DTD 6/21/95)

Counter-Defendant,)

and,)

FIRST ARLINGTON NATIONAL BANK)
 as Trustee of S.B. Lexington, Inc. Employee)
 Death Benefit Trust, UNITED BANK OF)
 ILLINOIS, BANK OF AMERICA,)
 Successor in interest to LaSalle National)
 Trust, N.A., SIMON BERNSTEIN TRUST,)
 N.A., TED BERNSTEIN, individually and)
 as purported Trustee of the Simon Bernstein)
 Irrevocable Insurance Trust Dtd 6/21/95,)
 and ELIOT BERNSTEIN,)

Third-Party Defendants.)

**Case No. 13 cv 3643
 Honorable John Robert Blakey
 Magistrate Mary M. Rowland**

**INTERVENOR’S LOCAL RULE
 56.1(a)(3) STATEMENT OF
 UNDISPUTED MATERIAL FACTS**

Filer:
 Brian O’Connell, as Personal Representative
 of the Estate of
 Simon L. Bernstein, Intervenor.

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff,)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant,)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

BRIAN M. O'CONNELL, as Personal)
Representative of the Estate of)
Simon L. Bernstein,)

Intervenor.)

INTERVENOR'S LOCAL RULE 56.1(a)(3) STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Intervenor Brian M. O'Connell, Personal Representative of the Estate of Simon L. Bernstein ("Estate"), for his Statement of Undisputed Material Facts pursuant to Local Rule 56.1(a)(3), states as follows:

I. THE PARTIES

1. The Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 ("1995 Trust") is a Plaintiff and purports to be an irrevocable life insurance trust formed in Illinois. The Estate disputes the existence and terms of the 1995 Trust. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 1 (ECF No. 192); *Order* at 2-4 (ECF No. 220).)

2. Benjamin Brown, as Curator of The Estate of Simon L. Bernstein (the "Estate"), filed a motion to intervene in this litigation. On July 28, 2014, the Court granted the motion to intervene and the Estate became an Intervenor-Plaintiff. (ECF No. 121.) On November 3, 2014, Brian O'Connell substituted his appearance as the Personal Representative of the Estate. (ECF No. 126.)

3. Ted Bernstein, both individually and purporting to be Trustee of the alleged 1995 Trust, is a Plaintiff. Ted Bernstein has also been named as a Third-Party Defendant to Eliot Bernstein's third-party claims. Ted Bernstein is one of the five adult children of Simon Bernstein. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 6 (ECF No. 192); *Affidavit of Ted Bernstein* ¶ 25 (ECF No. 150-31).)

4. Ted Bernstein will receive over \$300,000, representing 20 percent of the Policy proceeds, if Plaintiffs prevail in this litigation. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 3 (ECF No. 201); *Deposition of Ted Bernstein*, 9:18-10:4, 118:16-119:14 (ECF No. 192-1).)

5. Pamela Simon is a Plaintiff, and has been named as a Third-Party Defendant to Eliot Bernstein's third-party claims. Pamela Simon is one of the five adult children of Simon Bernstein. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 10 (ECF No. 192); *Affidavit of Pam Simon* ¶¶ 2-3 (ECF No. 150-32).)

6. David Simon is Pamela Simon's husband, Adam Simon's brother, and has been named a Third-Party Defendant to Eliot Bernstein's third-party claims. Adam Simon was previously counsel for all Plaintiffs and is currently counsel for Plaintiffs the 1995 Trust, Ted Bernstein and Pamela Simon, and Third-Party Defendants David Simon and The Simon Law Firm. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 2 (ECF No. 201); *Deposition of David Simon*, 7:9-10 (ECF No. 192-2); *Affidavit of David Simon* ¶ 20 (ECF No. 150-33); ECF Nos. 12, 26, 46, 224 and 226.)

7. Pamela Simon will receive over \$300,000, representing 20 percent of the Policy proceeds, if Plaintiffs prevail in this litigation. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 2 (ECF No. 201); *Deposition of David Simon*, 58:13-59:4 (ECF No. 192-2).)

8. Jill Marla Iantoni is a Plaintiff, and has been named as a Third-Party Defendant to Eliot Bernstein's third-party claims. Jill Marla Iantoni is one of the five adult children of Simon Bernstein. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 9 (ECF No. 192); *Affidavit of Jill Iantoni* ¶¶ 2-3 (ECF No. 150-34).)

9. Lisa Sue Friedstein is a Plaintiff, and has been named as a Third-Party Defendant to Eliot Bernstein's third-party claims. Lisa Sue Friedstein is one of the five adult children of Simon Bernstein. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 8 (ECF No. 192); *Affidavit of Lisa Friedstein* ¶¶ 2-3 (ECF No. 150-35).)

10. Jill Marla Iantoni and Lisa Sue Friedstein will each receive over \$300,000, representing 20 percent of the Policy proceeds, if Plaintiffs prevail in this litigation. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 4 (ECF No. 201); *Deposition of Ted Bernstein*, 118:16-119:14 (ECF No. 192-1); *Deposition of David Simon*, 58:13-59:4 (ECF No. 192-2); Plaintiffs' Exhibit 15 (ECF No. 150-16); Plaintiffs' Exhibit 16 (ECF No. 150-17).)

11. Eliot Bernstein ("Eliot") was made a Party by virtue of Heritage Union Life Insurance Company's counterclaim for Interpleader, and Eliot filed third-party claims against several Parties as described herein, making Eliot a Third-Party Plaintiff as well. Eliot is one of the five adult children of Simon Bernstein. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 3 (ECF No. 192); *Affidavit of Ted Bernstein* ¶ 23 (ECF No. 150-31).)

12. Heritage Union Life Insurance Company ("Heritage") is the successor to the Capitol Bankers Life Insurance Company ("Capitol Bankers"), which originally issued the Policy to Simon Bernstein in 1982. Heritage was terminated as a party on February 18, 2014 when the Court granted Heritage's motion to dismiss itself from the Interpleader litigation after having deposited the Policy proceeds with the Registry of the Court pursuant to an Agreed Order. (ECF No. 101.)

II. THE LIFE INSURANCE POLICY

13. In 1982, Simon Bernstein applied for a life insurance policy from Capitol Bankers, which was issued as Policy No. 1009208 (the "Policy"). (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 26 (ECF No. 192); *Affidavit of Don Sanders* ¶¶ 6, 23 (ECF No. 150-30).) The amount of the Policy proceeds (plus interest) on deposit with

the Registry of the Court exceeds \$1.7 million. (ECF No. 101; Plaintiffs' Exhibit 2 (ECF No. 150-3).)

14. The Capitol Bankers Life Insurance Application, dated October 12, 1982 (the "Application"), designates Simon L. Bernstein as the Insured, lists S.B. Lexington, Inc. as his employer, and designates the Owner of the Policy as "First Arlington National Bank Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust." (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 27 (ECF No. 192); Plaintiffs' Exhibit 3 (ECF No. 150-4); *Affidavit of Don Sanders* ¶ 48 (ECF No. 150-30).)

15. The Application: (i) directs premium notices to be sent to S.B. Lexington, Inc. Employee Death Benefit Plan c/o National Service Assoc. at 9933 Lawler Ste. 210, Skokie, Illinois 60077; (ii) lists Simon Bernstein's occupation as an Executive with S.B. Lexington, Inc. located in Skokie, Illinois; (iii) lists Simon Bernstein as the selling agent of the Policy; and (iv) was signed in Illinois. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 28 (ECF No. 192); Plaintiffs' Exhibit 3 (ECF No. 150-4); *Affidavit of Don Sanders* ¶ 48 (ECF No. 150-30).)

16. In late 1982 when the Policy was issued: (a) the Policy would have been delivered to the selling agent (*i.e.* Simon Bernstein), who would have then delivered the Policy to the initial Owner; (b) Simon Bernstein resided and was domiciled in Glencoe, Illinois; (c) Simon Bernstein's offices were located in Chicago, Illinois; and (d) First Arlington National Bank was located in Arlington Heights, Illinois. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 28 (ECF No. 192); Plaintiffs' Exhibit 3 (ECF No. 150-4); *Affidavit of Don Sanders* ¶ 48 (ECF No. 150-30); *Affidavit of Pam Simon* ¶¶ 22-24 (ECF No. 150-32).)

III. THE DESIGNATED BENEFICIARIES

17. At the time the Policy was issued, the only designated beneficiary was First Arlington National Bank as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶¶ 29-30 (ECF No. 192); Plaintiffs' Exhibit 3 (ECF No. 150-4); *Affidavit of Don Sanders* ¶ 48 (ECF No. 150-30).)

18. In June of 1992, LaSalle National Trust, N.A., as Successor Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust, became Owner of the Policy. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 31 (ECF No. 192); Plaintiffs' Exhibit 7 (ECF No. 150-8); *Affidavit of Don Sanders* ¶ 55 (ECF No. 150-30).)

19. In November of 1995, Capitol Bankers received a "Request Letter" signed by the Owner of the Policy, LaSalle National Trust, N.A., pursuant to which the following changes were made to the Policy: (a) LaSalle National Trust, N.A., as Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust, was designated primary beneficiary; and (b) the "Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995" (*i.e.* the 1995 Trust) was designated contingent beneficiary. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 33 (ECF No. 192); Plaintiffs' Exhibit 8 at JCK000370 (ECF No. 150-9); *Affidavit of Don Sanders* ¶¶ 56, 60 (ECF No. 150-30).)

20. As of September 13, 2012, the date of Simon Bernstein's death: (a) LaSalle National Trust, N.A., as Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust, was designated primary beneficiary of the Policy; and (b) the "Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995" (*i.e.* the 1995 Trust) was designated contingent beneficiary of the Policy. (*Affidavit of Don Sanders* ¶¶ 62, 72 (ECF No. 150-30); Plaintiffs' Exhibit 8 at JCK000370 (ECF No. 150-9); *Deposition of Ted Bernstein*, 10:8-10 (ECF No. 192-1).)

21. On April 3, 1998, S.B. Lexington, Inc. was voluntarily dissolved and the S.B. Lexington, Inc. Employee Death Benefit Trust was terminated. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 36 (ECF No. 192); Plaintiffs' Exhibit 9 (ECF No. 150-10); *Affidavit of Pam Simon* ¶ 36 (ECF No. 150-32).)

22. Neither LaSalle National Trust, N.A. as Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust, nor the S.B. Lexington, Inc. Employee Death Benefit Trust itself, has made any claim to the Policy proceeds. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 37 (ECF No. 192); *Affidavit of Don Sanders* ¶¶ 77(a)-(b), 78 (ECF No. 150-30).)

23. First Arlington National Bank has not made any claim to the Policy proceeds. Its successor-in-interest, J.P. Morgan Bank, filed a responsive pleading in this action, and then a motion for judgment on the pleadings in which it disclaimed any interest in the Policy proceeds and requested to be dismissed. That motion was granted and J.P. Morgan Bank was dismissed as a Party on March 12, 2014. (*Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* ¶ 37 (ECF No. 192); ECF No. 60; ECF No. 105.)

IV. THE FIRST "EXHAUSTIVE SEARCH" FOR THE 1995 TRUST

24. At least one "exhaustive search" for the 1995 Trust document was conducted between Simon Bernstein's death on September 13, 2012 and December 6, 2012, but no trust document could be found. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 9 (ECF No. 201); *Deposition of Ted Bernstein*, 55:1-11 and Dep. Ex. 3 at TS004519 (ECF No. 192-1).)

25. According to David Simon, the first attempt to locate the 1995 Trust document occurred in the winter of 2012-2013. He was aware of the search and advised that no such

document was found. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 10 (ECF No. 201); *Deposition of David Simon*, 59:13-17, 60:4-6 (ECF No. 192-2).)

26. David Simon also testified that Foley & Lardner, the successor firm to Hopkins & Sutter, and some of the attorneys who broke away from Hopkins & Sutter and started their own firm, were contacted to see if they had a copy of a 1995 Trust document, but they did not. David Simon does not even know whether it was he or someone else who contacted Foley & Lardner and the attorneys, or with whom they specifically spoke, and he testified that whoever it was may have been asked to do so by him, his wife Pamela Simon, or his brother Adam Simon. (*Deposition of David Simon*, 44:17-45:15, 46:2-4 (ECF No. 192-2).)

V. **IDEAS ABOUT HOW TO OBTAIN THE POLICY PROCEEDS & UNSUCCESSFUL ATTEMPTS TO DO SO**

27. On August 15, 2000, Simon Bernstein executed the Simon Bernstein 2000 Insurance Trust (the "2000 Trust"), which identifies the Policy at issue in this litigation as an asset of the 2000 Trust. (*Deposition of Ted Bernstein*, Dep. Ex. 23 at ¶ 1 and Schedule A (ECF No. 192-1); *Order* at 5 (ECF No. 220).)

28. Plaintiffs considered "using" the 2000 Trust to obtain the Policy proceeds, but this option was rejected on or before November 19, 2012 because Pamela Simon was not included as a beneficiary of the 2000 Trust. (*Deposition of Ted Bernstein*, 48:21-49:9, Dep. Ex. 1 and Dep. Ex. 2 at TS004490 (ECF No. 192-1); *Order* at 5 (ECF No. 220).)

29. Plaintiffs' former counsel, Robert Spallina, representing that he was trustee of the 1995 Trust, made an application to Heritage for the Policy proceeds on behalf of Plaintiffs. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 7 (ECF No.

201); *Deposition of Ted Bernstein*, 35:6-16 and Dep. Ex. 1 (ECF No. 192-1); *Deposition of David Simon*, 81:15-82:2 (ECF No. 192-2).)

30. On October 19, 2012, Ted Bernstein sent Robert Spallina an email suggesting he had a “solution to the life insurance policy which provides the desired result,” that he wanted to discuss and that the initial conversation about it involve only him, Robert Spallina, Pamela Simon and David Simon. The email also asked that Robert Spallina avoid any further overtures to the insurance company until after the initial conversation in order “to avoid any unnecessary confusion” for the insurance company. (*Movants’ Reply to the Estate of Simon Bernstein’s Statement of Additional Facts* ¶ 7 (ECF No. 201); *Deposition of Ted Bernstein*, Dep. Ex. 1 at TS004965 (ECF No. 192-1).)

31. On November 19, 2012, after Robert Spallina unsuccessfully attempted to claim the Policy proceeds without providing any documentation, David Simon suggested attempting to secure the Policy proceeds on behalf of the Plaintiffs by submitting a waiver and settlement agreement to the insurer. (*Movants’ Reply to the Estate of Simon Bernstein’s Statement of Additional Facts* ¶ 8 (ECF No. 201); *Deposition of Ted Bernstein*, 51:22-52:2, 53:22-54:4 and Dep. Ex. 2 at TS004490 (ECF No. 192-1).) The Plaintiffs tried David Simon’s suggestion of a waiver and settlement agreement, but it was not successful because Eliot would not agree. (*Deposition of Ted Bernstein*, 54:13-25 and Dep. Ex. 3 (ECF No. 192-1).)

32. Between October 19, 2012 and February 8, 2013, the Plaintiffs exchanged many emails discussing how best to obtain the Policy proceeds and referring to an inability to locate the 1995 Trust document. (*Order* at 5 (ECF No. 220); *Deposition of Ted Bernstein*, Dep. Exs. 1-4, 8-9 (ECF No. 192-1).) David Simon was a participant in the email exchanges, yet in none of those emails did he relate a recollection that he created the 1995 Trust document for Simon

Bernstein, that he saw the final version of the 1995 Trust executed by Simon Bernstein, or that it named Ted Bernstein as successor trustee of the 1995 Trust. (*Id.*)

33. One of those email exchanges on January 22, 2013 states that “none of us can be sure exactly what the 1995 trust said.” (*Deposition of Ted Bernstein*, Dep. Ex. 4 (ECF No. 192-1).)

34. On February, 8, 2013, Pamela Simon informed Ted Bernstein that she could not find a copy of the insurance Policy or the 1995 Trust. (*Movants’ Reply to the Estate of Simon Bernstein’s Statement of Additional Facts* ¶ 11 (ECF No. 201); *Deposition of Ted Bernstein*, 60:25-61:10, Dep. Ex. 8 at BT000049, and Dep. Ex. 10 at BT000047 (ECF No. 192-1).)

35. As of February 14, 2013, the Plaintiffs planned to pursue the Policy proceeds via a Release and Settlement Agreement and have the proceeds paid either to Robert Spallina as trustee or to the Tescher & Spallina trust account. (*Deposition of Ted Bernstein*, 62:17-63:3 and Dep. Ex. 11 at TS004464 (ECF No. 192-1).)

36. From March 15, 2013 through April 12, 2013, Robert Spallina on behalf of Plaintiffs was engaged in discussions with Heritage and they planned for Heritage to interplead the funds into court in Florida. (*Deposition of Ted Bernstein*, Dep. Exs. 15 and 16 (ECF No. 192-1).) Unbeknownst to Mr. Spallina, however, on April 5, 2013, the Plaintiffs, through counsel Adam Simon, filed a lawsuit in the Circuit Court of Cook County seeking to obtain the Policy proceeds from Heritage. (*Deposition of Ted Bernstein*, Dep. Ex. 16 at TS005253-54 (ECF No. 192-1); *Notice of Removal* ¶ 1 (ECF No. 1).) As a result, Robert Spallina and the law firm Tescher & Spallina ceased representing Plaintiffs in connection with their efforts to obtain the Policy proceeds from Heritage. (*Deposition of Ted Bernstein*, Dep. Ex. 16 at TS005252, and Dep. Ex. 17 at TS006547 (ECF No. 192-1).)

37. Despite David Simon's current claims that he drafted the 1995 Trust document on his computer and saw it after execution, the Complaint filed by his brother on April 5, 2013 makes no reference whatsoever to David Simon having drafted the 1995 Trust or having seen the final version after it was executed, or to the identity of the trustee and successor trustee named in the executed 1995 Trust, or to the alleged fact that Simon Bernstein ever even executed a 1995 Trust document. (*Complaint at Law* (ECF No. 1-1).)

38. As of August 30, 2013, the 1995 Trust (in any form) could not be located. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 16 (ECF No. 201); Plaintiffs' Exhibit 15 at BT000002 (ECF No. 150-16); *Deposition of David Simon*, 95:9-13 (ECF No. 192-2).)

VI. THE SEARCH WHICH UNCOVERED THE PURPORTED DRAFTS OF THE 1995 TRUST

39. David Simon claims to have located an unexecuted draft electronic copy of the purported 1995 Trust (*i.e.* Plaintiffs' Exhibit 15 (ECF No. 150-16)) on the computer system of The Simon Law Firm on September 13, 2013. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 16 (ECF No. 201); Plaintiffs' Exhibit 15 at BT000002 (ECF No. 150-16); *Deposition of David Simon*, 95:9-13 (ECF No. 192-2).)

40. According to David Simon, he located Plaintiffs' Exhibit 15 with the help of his brother, Adam Simon. (*Affidavit of David Simon* ¶ 29 (ECF No. 150-33).)

41. David Simon also claims to have located an unexecuted draft paper copy of the purported 1995 Trust (*i.e.* Plaintiffs' Exhibit 16 (ECF No. 150-17)) which contains his handwritten notes in the stored files of The Simon Law Firm on or about September 13, 2013. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 17 (ECF No.

201); Plaintiffs' Exhibit 16 (ECF No. 150-17); *Deposition of David Simon*, 94:13-95:8 (ECF No. 192-2); *Affidavit of David Simon* ¶ 28 (ECF No. 150-33).)

42. According to David Simon, he located Plaintiffs' Exhibit 16 without anyone else's assistance. (*Affidavit of David Simon* ¶ 28 (ECF No. 150-33).)

43. According to Pamela Simon, however, she and David Simon located Plaintiffs' Exhibit 15 and Plaintiffs' Exhibit 16, with assistance from their employees. (*Affidavit of Pam Simon* ¶ 37 (ECF No. 150-32).)

VII. THE EXISTENCE AND TERMS OF THE PURPORTED 1995 TRUST

44. Plaintiffs have produced no executed original or executed copy of a written trust agreement reflecting the terms of the purported 1995 Trust. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 6 (ECF No. 201); *Answer to Intervenor Complaint* ¶ 9 (ECF No. 144); *Deposition of Ted Bernstein*, 13:13-15 (ECF No. 192-1).)

45. According to David Simon, he had a conversation with Simon Bernstein on June 20, 1995 about creating an insurance trust, during which Simon Bernstein said he wanted to create one and name his wife Shirley as trustee and David Simon as successor trustee, and David Simon agreed to be successor trustee. David Simon testified that he took handwritten notes of this conversation on Plaintiffs' Exhibit 16. (*Plaintiffs' First Amended Complaint* ¶ 29 (ECF No. 73); *Deposition of David Simon*, 39:15-40:1, 40:17-41:1, 41:7-20, 96:3-11 (ECF No. 192-2); *Affidavit of David Simon* ¶ 28 (ECF No. 150-33).)

46. The handwritten notes on Plaintiffs' Exhibit 16, however, list the trustee as "Shirley, David, [illegible]?" and list the successor trustee as "Pam, Ted." (*Plaintiffs' Exhibit 16* at BT000020 (ECF No. 150-17).)

47. David Simon testified that his assistant created Plaintiffs' Exhibit 15 by making the modifications reflected in David Simon's handwritten notes on Plaintiffs' Exhibit 16. (*Deposition of David Simon*, 40:17-41:1, 96:3-11 (ECF No. 192-2).)

48. Plaintiffs' Exhibit 15, however, identifies the trustee as "Shirley Bernstein" and identifies the successor trustee as "David B. Simon." (*Plaintiffs' Exhibit 15* at BT000010 (ECF No. 150-16).)

49. David Simon testified that, after thinking about it overnight, on June 21, 1995 he asked Simon Bernstein to remove him as successor trustee and make the successor trustees Simon Bernstein's children sequentially. (*Deposition of David Simon*, 41:17-23 (ECF No. 192-2).)

50. David Simon averred, however, that he asked Simon Bernstein to appoint only Ted Bernstein as successor trustee. (*Affidavit of David Simon* ¶ 25 (ECF No. 150-33).)

51. David Simon testified that he did not change the name of the successor trustee from his own name, and Simon Bernstein then took Plaintiffs' Exhibit 15 to the law firm of Hopkins & Sutter to be finalized and executed. (*Deposition of David Simon*, 40:2-7, 41:17-42:5 (ECF No. 192-2).)

52. According to David Simon, he met with Simon Bernstein after the 1995 Trust document was executed and reviewed the final executed version of it, which he claims named Ted Bernstein as the successor trustee. (*Deposition of David Simon*, 42:6-43:1 (ECF No. 192-2); *Affidavit of David Simon* ¶ 27 (ECF No. 150-33).)

53. David Simon testified that, when he met with Simon Bernstein after the 1995 Trust document was executed, he had Simon Bernstein sign a change of beneficiary form to submit to Lincoln Benefit in order to make the 1995 Trust the beneficiary of Simon Bernstein's

life insurance policy issued by Lincoln Benefit, and that he would have expected Lincoln Benefit to retain a copy of that form. David Simon also testified that Lincoln Benefit was contacted and they did not have a copy of the 1995 Trust. (*Deposition of David Simon*, 43:10-44:2 (ECF No. 192-2); *Order* at 5-6 (ECF No. 220).)

54. Ted Bernstein, purported trustee of the 1995 Trust, has never seen an executed copy of a 1995 Trust document. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 5 (ECF No. 201); *Deposition of Ted Bernstein*, 24:6-12 (ECF No. 192-1).)

55. According to Ted Bernstein, in the summer of 1995, he had a conversation with his father in which his father told Ted that he was forming a life insurance trust for the Policy and that Ted would be one of the trustees. No one except Simon Bernstein and Ted Bernstein was present for the conversation. (*Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts* ¶ 5 (ECF No. 201); *Deposition of Ted Bernstein*, 23:1-8 (ECF No. 192-1); *Affidavit of Ted Bernstein* ¶ 88 (ECF No. 150-31).)

56. Ted Bernstein averred, based on having reviewed the purported drafts of the 1995 Trust document and facts as told to him by David Simon, that Ted was appointed successor trustee of the 1995 Trust. (*Affidavit of Ted Bernstein* ¶ 99 (ECF No. 150-31).)

57. Ted Bernstein testified that the bases for his knowledge that he is successor trustee of the 1995 Trust are that he saw his name handwritten on Plaintiffs' Exhibit 16 at page BT000020 (ECF No. 150-17), and after his father's death, David Simon told him that he was successor trustee of the 1995 Trust. When David Simon informed Ted that he was successor trustee, Ted does not recall whether he even remembered the conversation he testified that he had with his father during the summer of 1995. (*Deposition of Ted Bernstein*, 12:19-16:16, 17:5-17, 24:13-25:3 and Dep. Ex. 22 (ECF No. 192-1).)

VIII. SIMON BERNSTEIN'S SUBSEQUENTLY-EXECUTED ESTATE DOCUMENTS

58. On August 15, 2000, Simon Bernstein executed the Simon Bernstein 2000 Insurance Trust (the "2000 Trust"), which identifies the Policy at issue in this litigation as an asset of the 2000 Trust. (*Deposition of Ted Bernstein*, Dep. Ex. 23 at ¶ 1 and Schedule A (ECF No. 192-1); *Order* at 5 (ECF No. 220).)

59. The 2000 Trust document makes no reference to the 1995 Trust (*i.e.* the "Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995"), which the 2000 Trust would have superseded. (*Deposition of Ted Bernstein*, Dep. Ex. 23 (ECF No. 192-1); *Order* at 5 (ECF No. 220).)

60. Pursuant to the terms of the 2000 Trust, the Trustees were only authorized to pay the trust principal and income to only Shirley Bernstein and Simon Bernstein's "descendants," with "descendants" being defined to "specifically exclude ... PAMELA BETH SIMON and her descendants." (*Deposition of Ted Bernstein*, Dep. Ex. 23 at ¶¶ 2(a)-(b), 9 (ECF No. 192-1).)

61. On May 20, 2008, Simon Bernstein executed the Simon L. Bernstein Irrevocable Trust Agreement (the "2008 Trust"). The terms of the 2008 Trust, in effect, provide that no inheritance shall pass to Ted Bernstein, Pamela Simon, or the lineal descendants of either Ted Bernstein or Pamela Simon. (*Deposition of David Simon*, 55:2-17 (ECF No. 192-2); *Deposition of Ted Bernstein*, Dep. Ex. 25 (ECF No. 192-1).)

62. In January 2012, Plaintiff Pamela Simon wrote to her father, Simon Bernstein, expressing her distress over his act of "disinheriting" her, David Simon and their children, as well as Ted Bernstein and his children. (*Deposition of Ted Bernstein*, Dep. Ex. 26 (ECF No. 192-1).) Pamela Simon wrote the note to her father because she was passionate about the fact

that his “estate plan” did not include her and her family or Ted Bernstein and his family. (*Deposition of Ted Bernstein*, 90:22-25, 91:13-25, and Dep. Ex. 26 (ECF No. 192-1).)

63. A few months before he died on September 13, 2012, Simon Bernstein arranged a conference call with Robert Spallina, Plaintiffs and some of their spouses. During the call, Simon Bernstein instructed that the assets of his estate and trust would be left to his ten grandchildren and the insurance policy proceeds were to pass to his five children, in an effort to quell some then-existing family acrimony about his girlfriend and about the trust document that disinherited Pamela Simon, Ted Bernstein and their respective children. (*Deposition of Ted Bernstein*, 90:11-18 (ECF No. 192-1); *Deposition of David Simon*, 53:1-19, 54:3-55:17 (ECF No. 192-2).)

64. On July 25, 2012, Simon Bernstein executed the Simon L. Bernstein Amended and Restated Trust Agreement (the “2012 Trust”), which amends and restates in its entirety the 2008 Trust. (*Deposition of Ted Bernstein*, Dep. Ex. 24 at TS007362 (ECF No. 192-1).) Pursuant to the terms of the 2012 Trust, all of the Plaintiffs shall be deemed to have predeceased Simon Bernstein and all assets are to be passed on equal shares among Simon Bernstein’s grandchildren. (*Id.* at Art. I (B)-(C), Art. III (E)(1).)

65. On September 7, 2012, six days prior to his death, Simon Bernstein prepared a holographic will directing a bequest to Maritza Puccio of, among other things, \$100,000 from his current insurance policy and expressing an intention to change the beneficiary on said policy to reflect his wishes. (ECF No. 192-3 at TS003889). Simon Bernstein directed that the bequest to Ms. Puccio should proceed in the event of his death “with no interruption from family or probate.” (*Id.*) This document was not witnessed or notarized. (*Id.*)

66. There is no evidence that Simon Bernstein executed any other Wills or trust agreements between July 25, 2012 and his death on September 13, 2012.

Dated: May 25, 2016

BRIAN M. O'CONNELL, PERSONAL REPRESENTATIVE
OF THE ESTATE OF SIMON L. BERNSTEIN, Intervenor

By: /s/ James J. Stamos
One of Intervenor's Attorneys

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Attorneys for Intervenor

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing **Intervenor's Local Rule 56.1(a)(3) Statement of Undisputed Material Facts** to be served upon all registered E-Filers via electronic filing using the CM/ECF system, and to be served upon the following persons via U.S. mail, proper postage prepaid:

Lisa Sue Friedstein
2142 Churchill Lane
Highland Park, IL 60035
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Pro Se Litigant

Jill Marla Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Pro Se Litigant

on this 25th day of May, 2016.

/s/ James J. Stamos

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable John
Robert Blakey

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, May 26, 2016:

MINUTE entry before the Honorable John Robert Blakey: Status hearing held on 5/26/2016. Motion for leave to file amended complaint [231] is denied. Any response to dispositive motions shall be filed on or before 7/26/2016; replies shall be filed on or before 9/6/2016. Status hearing set for 9/20/2016 at 9:45 a.m. in Courtroom 1725. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable John
Robert Blakey

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, June 2, 2016:

MINUTE entry before the Honorable John Robert Blakey: In light of the proceedings in court on 5/26/16, the 6/7/16 Notice of Motion date is stricken, and the parties need not appear. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

Simon Bernstein Irrevocable
Insurance Trust Dtd 6/21/95, et al.,

Plaintiffs,

v.

Heritage Union Life
Insurance Co., et al.,

Defendants.

Case No. 13-cv-3643

Judge John Robert Blakey

Filers:
Eliot Ivan Bernstein, Pro Se

**THIRD-PARTY DEFENDANT ELIOT I. BERNSTEIN MOTION FOR EXTENSION OF
TIME TO FILE RESPONSE TO MOTIONS TO DISMISS**

Comes now pro se indigent third-party defendant Eliot I. Bernstein who respectfully pleads,
prays and shows this Court as follows:

1. I am the third-party Defendant herein pro se and respectfully make this motion seeking an extension of time to file and serve responses to the dispositive motions herein which by Order of this Court are currently due on July 26, 2016.
2. I respectfully pray for at least a 30 day extension which I assert in good faith is reasonable under the circumstances but alternatively pray for no less than a 15 day extension from the current deadline of July 26, 2016.

3. I am under medical treatment for ongoing dental matters of a serious nature and under Dentist-doctor prescribed narcotics and other medication and have significant issues sleeping and related pain as a result.
4. More importantly as shown herein, I have been fighting for more than a month in the Florida Courts simply to get access to Full Records and Indexes certified by Clerk Sharon Bock of the 15th Judicial for the related cases in Florida which are not only the subject of several appeals in the Florida Courts but also directly a part of the dispositive motions to be responded to with the decisions and Orders of the Florida Courts being directly relied upon by Ted Bernstein and his counsel David Simon in the dispositive motion I am attempting to respond to in this Court. `
5. As shown to the Florida 4th District Court of Appeals, by operation of the Florida Rules of Appellate procedure, full production of the Indexes and Records on Appeal automatically occurs by the Clerk of the Court upon default unless a party specifies otherwise.
6. And yet as an indigent litigant acting pro se I have been repeatedly denied access to these records by the 4th District Court of Appeals while also being forced to undergo unnecessary burdens at the 15th Judicial to re-assert my indigency status.
7. As shown herein, I filed a motion with specificity with the 4th DCA showing specifically why I should be able to obtain what otherwise is automatically provided “in a normal case” to all litigants and this specificity included but was not limited to swearing to the Court that not only had I never been served various documents that are contained in the full records and indexes therein, but one such document never served was a Petition for Administration filed and signed by both attorneys Tescher and Spallina in the Estate of

Simon Bernstein where said Petition specifically named myself as one of 5 children (and not the grandchildren) as Beneficiaries of the Estate of Simon Bernstein which wholly contradicts the positions taken by Ted Bernstein at a one-day “validity” trial that was prejudicially “pre-determined” an artificially limited to “one day” only which did not permit time for necessary witnesses like Donald Tescher who not only had signed the document as an attorney which was contradicting the case presented by Ted Bernstein but further that Donald Tescher had admitted in the only Deposition before Trial that his firm had known about another fraud in those cases involving his partner Robert Spallina who had “altered” my mother Shirley Bernstein’s trust attempting to illegally change the beneficiaries and yet his firm took no action to correct for an entire year while letting Ted Bernstein carry on in the fraud once Tescher and Spallina resigned and replaced themselves with Ted as Trustee of the alleged Amended and Restated Simon Bernstein Trust.

8. This Court will see that not only was this the only pre-trial Deposition in a very complex case in the Florida courts but also was “limited” by the terms of the deposition and where I was not permitted an opportunity to question Donald Tescher whatsoever and to the contrary the deposition was abruptly stopped when I asked my first question¹.

¹ July 26, 2016 “Appellant’s Good Faith Draft Initial Brief on Appeal and Response To Show Cause; Extension of Time”

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160705%20FINAL%20ESIGNEDAPPELLANTSGOODFAITHDRAFTBRIEFRESPONSESHOWCAUSEAPPEALVALIDITY4THDCA%20ECF%20STAMPED%20COPY.pdf>

And

June 20, 2016 “Appellant’s Motion To Supplement Record on Appeal”

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160620%20Final%20Signed%204thDCA%20Motion%20To%20Supplement%20Record%20on%20Appeal%20Transcripts%20ECF%20Stamped%20Copy.pdf>

And

June 14, 2016 “Motion for Extension of Time to Submit an Initial Brief upon Proper and Meaningful Access to Records on Appeal, Vacating and Rehearing En Banc this Court’s Order of June 9, 2016 as

9. I just recently completed serving my Initial Brief to the 4th DCA on the alleged “validity” trial which was done under protest and with a reservation of rights claiming prejudice on appeal by being denied Full Production of Records and Indexes as provided by operation of Appellate Rules particularly where I also showed that an “unknown” Judge had signed the Order admitting the Simon Bernstein Will into Probate time-stamped in even before the Will itself was filed in Oct. 2012, showing further fraud and collusion amongst the involved fiduciaries and Courts of Florida².
10. Moreover I already have at least one other Initial Brief due in the next few days in the Oppenheimer case where again fraud has been shown going back to 2010 and where again full Records and Indexes have not been provided from all related cases. This fraud in Oppenheimer was raised before this Court in my Petition for Injunction under the All Writs Act which was denied by this Court while the pleading was not struck from the Records.

violative of the US Constitution, Florida State Constitution and for a Written Opinion Clarifying such matters;”

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160614%20FINAL%20ESIGNED%20MOTION%20REHEARD%20ENI%20BANC%204thDCA%204D16%200222%20ECF%20STAMPED%20COPY.pdf>

And

May 25, 2016 “Appellant’s Motion with Specificity to ; Order Production of the Full Record and Extend Time to File Initial Brief”

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160525%20FINAL%20ESIGNED%204th%20DCA%204D16%200222%20Motion%20with%20Specificity%20to%20Order%20Production%20Extend%20Time%20LT%203698%20ECF%20STAMPED%20COPY.pdf>

And

May 03, 2016 “Motion for Extension of Time to File Brief and Request for Order to Produce Indexes for Appeal for Two Additional Cases the Appealed Order Addresses”

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160503%20FINAL%20ESIGNED%204th%20DCA%204D16-0222%20Motion%20for%20Extension%20of%20Time%20and%20Additional%20Indexes%20Validity%20Appeal%20ECF%20STAMPED%20COPY.pdf>

And

April 12, 2016 “Appellant’s Response to Show Cause; Request for Extension to File Initial Brief”

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160412%20FINAL%20ESIGNED%20EXTENSION%20REQUEST%204thDCA%20ValidityTrial%204.11.16%20ECF%20STAMPED%20COPY.pdf>

² July 12, 2016 “INITIAL BRIEF OF APPELLANT”

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160712%204th%20DCA%204D16-0222%20FINAL%20ESIGNED%20INITIAL%20BRIEF%20APPEAL%20VALIDITY%20TRIAL%20PHILLI%20ECF%20STAMPED%20COPY.pdf>

11. There is also a brief coming due in the illegal “Guardianship” that was imposed on me as well in the Florida courts.
12. Further, while I have reminded and pleaded to the 4th DCA to comply with obligations under the Florida Statewide Court Fraud policy where the fraud in the Florida cases has never been fully addressed (nor acted upon by the Palm Beach County Sheriff’s Department), I have been busy formulating further submissions to the Florida Court State Inspector General as well.
13. And in far more serious and pressing matters directly threatening my personal welfare and the welfare of my family, as various documents, pictures and audio files have emerged under Freedom of Information requests in regards to the gruesome death at my parent’s home at 7020 Lions Head Lane, Boca Raton, Florida of one Mitch Huhem in the day or days before I filed my Emergency Petition for Injunction under the All Writs Act with this Court on or about Feb. 24, 2016, where Mitch Huhem allegedly had previously taken title to my parents’ property under an illegally created shell company Lions Head Land Trust, Inc. and then suddenly died just as I was disclosing the fraud to this Court and federal authorities, the glaring, widespread and pervasive contradictions of very key and important details, virtually all details in this gruesome death and alleged “investigation” of this death has consumed further time not only to assess the information but further to begin compiling a detailed report / complaint to the FBI and other authorities where I have direct knowledge that the FBI has an “open case” on at least Robert Spallina involved in the frauds herein.
14. More seriously, the audio interview on one Laurence Pino shows direct attempts by Pino to falsely implicate me in possible “foul play” in Mitch Huhem’s death, falsely

implicating me with one Detective Perez of the PBSO with Laurence Pino being the attorney who was involved in the illegal creation of the Lions Head Land Trust, Inc. and also attorney representing Mitch Huhem who also happened to be a direct Beneficiary under the new “changed” Will of Mitch Huhem that cut out his children,

15. The interview clearly shows Mr. Pino materially omitting key facts such as his threatening email to one Leilani Ochoada on Feb. 19, 2016 after Pino’s own Executive Assistant exposed that same day by email that Pino’s office had NO documents or Authorizations on file from Leilani Ochoada thus implicating Pino in felony fraud at the Florida Dept of State the Friday before Mitch Huhem ends up grotesquely dead in my parents home and yet there was no mention of these facts by Pino to Detective Perez, nor production of the emails and instead directly false slanderous statements are made by Pino against me to the PBSO which given the serious defects and flaws in any alleged “investigation” of this death creates a very realistic fear in my own life such that time is necessary to be available to seek intervention from the FBI and other authorities.
16. Having personally viewed many of the pictures taken by the PBSO at my parents’ home I can clearly affirm to this Court the very grotesque shocking nature of the death of Mitch Huhem with blood pool and brain parts and fragments in my parents’ garage and yet having spent nearly an hour on the phone with Detective Perez on or around April 16, 2016 on the Mitch Huhem death providing background information and even other witnesses to call, there is not one single solitary mention of the phone call with me by Detective Perez or anyone else in the PBSO that shows up anywhere in the alleged “investigation”.

17. Likewise, there is not one single reference or note from any information or conversation provided to the PBSO by Mitch Huhem's sisters and mother, nor any indication the PBSO tried to take any statement from Mitch's daughters who he spoke to in the days before he was found dead according to his sisters and yet what has been turned over by the PBSO are documents, pictures, records, photos and audio tapes showing glaring and irrefutable contradictions of key details beginning with a 9/11 called claiming Mitch may be "suicidal" by one Deborah Huhem which is later contradicted in a subsequent 911 Call before a body is allegedly discovered where it turns out the body is only a few hundred feet or more away from Deborah Huhem in the same house at 7020 Lions Head Lane, Boca Raton, Fl.
18. The lack of any consistent evidence turned over by the PBSO includes but is not limited to contradictions of when the body is allegedly discovered, how the body appears when discovered, contradictions of when Mitch was last seen by his wife, contradictions of his last 24 hours and further not one single note or call or interview with key witness Leilani Ochoada either who is referenced in my Feb. 24, 2016 Emergency Petition for an Injunction under the All Writs Act as someone who came forward claiming she gave no permission or authorization to Laurence Pino to incorporate this company in her name that was used to take my parent's home.
19. Consistent with what has gone on in this case in Illinois, however, the one common thread shown by the PBSO disclosures to date is that Ted Bernstein is at the epicenter of all of this being mentioned by Deborah Huhem multiple times on the the day the body is allegedly found, being referred to by Deb Huhem, being called by Deb Huhem, supposedly having meetings on the day in question with Mitch Huhem, even Ted

Bernstein being called to the “scene” at 7020 Lions Head Lane by an unknown, unidentified member of the PBSO and yet NO statement is taken of Ted Bernstein by the PBSO until on or about late May of 2016 after these matters were disclosed to this Court and yet consistent with the close special relationship between Ted Bernstein and the PBSO, his “interview” is not even recorded with no audio tape made and nothing under oath allegedly at Ted’s request.

20. Allegedly the phone information of Mitch Huhem’s phone and calls with Ted Bernstein have been lost and or destroyed either by Deb Huhem or the PBSO allowing Deb Huhem to keep the phone after the body was found even though the phone itself is the topic of the alleged original 911 call, but it is fair to say that the discoveries from this part of the case itself provide substantial “New Evidence” at least for motions in the related Florida courts and may potentially provide same in this Court as well and thus the extension is further needed to sort out and assess these new details coming to light.

21. For relevancy purposes I respectfully refer your Honor back to the Feb. 24, 2016 Emergency Petition and not only take note of the “Discovery” abuse game going on for years but also the “magically” found documents that show up at places like Lions Head Lane AFTER it had already been Inventoried and documents removed by the PR, Brian O’Connell, Esq. firm and remind your Honor of the Missing Mail and documents and account information and computer information from the Lions Head Lane home and failed court ordered inventory of Simon’s office whereby all his office records are now presumed lost or destroyed, all of which relates and is relevant to matters before this Court and where are the Trusts and Insurance information and similar information.

22. I have previously provided the FBI with this Court's Docket for review as well and will be copying certain federal authorities on this motion herein due to the serious nature of the actions, the crimes committed in the various frauds upon the Courts and what now appears to many to be a gruesome bloody matter of foul play while certain Courts continue on in the machinery of fraud denying access presently to proper records and discovery.

WHEREFORE, Third-Party Defendant Eliot I. Bernstein respectfully prays for an Order granting 30 days extension to file the responses to the dispositive motions herein or alternatively no less than 15 days to complete such act and for such other and further relief as may be just and proper.

Respectfully Submitted,

Date: July 17th, 2016

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein
Third Party Defendant/Cross Plaintiff
PRO SE
2753 NW 34th St.
Boca Raton, FL 33434
Telephone (561) 245-8588
iviewit@iviewit.tv
www.iviewit.tv

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 17th, 2016 I electronically filed the foregoing with the Clerk of the Court using CM/ECF and/or email. I also certify that the foregoing is being served

this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein
Third Party Defendant/Cross Plaintiff
PRO SE
2753 NW 34th St.
Boca Raton, FL 33434
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SERVICE LIST

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<p>Alan B. Rose, Esq. PAGE,MRACHEK,FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 arose@pm-law.com and arose@mrachek-law.com</p>	<p>Pamela Simon President STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>	<p>Estate of Simon Bernstein Personal Representative Brian M. O'Connell, Partner and Joielle Foglietta, Esq. Ciklin Lubitz Martens & O'Connell 515 N Flagler Drive 20th Floor West Palm Beach, FL 33401 boconnell@ciklinlubitz.com</p>
<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	<p>Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com</p>	<p>David B. Simon, Esq. #6205304 303 East Wacker Drive, Suite 2725 Chicago, Illinois 60601</p>

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<p>Michael Duane Sanders mds@pw-law.com, sjohnson@pw-law.com</p>	<p>Glenn E. Heilizer glenn@heilizer.com</p>	<p>John M. O'Halloran joh@mcveyparsky-law.com</p>

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable John
Robert Blakey

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, July 18, 2016:

MINUTE entry before the Honorable John Robert Blakey: Eliot Bernstein's motion for extension of time [252] is granted. Any response to dispositive motions shall be filed on or before 8/26/2016; replies shall be filed on or before 10/6/2016. The 7/21/16 Notice of Motion date is stricken, and the parties need not appear. The status hearing previously set for 9/20/2016 is stricken and reset for 10/27/2016 at 9:45 a.m. in Courtroom 1725. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
)
Plaintiff,)

**Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

v.)
)
HERITAGE UNION LIFE INSURANCE)
COMPANY,)
)
Defendant,)

**Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually,
Pamela B. Simon
("Plaintiffs")**

HERITAGE UNION LIFE INSURANCE)
COMPANY)
)
Counter-Plaintiff)

**PLAINTIFFS' SUPPLEMENTAL
STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF THEIR MOTION FOR
SUMMARY JUDGMENT**

v.)
)
SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)
)
Counter-Defendant)

and,)
)
FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)

Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)

ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)

TESCHER & SPALLINA, P.A.,)

DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)

both Professionally and Personally,)

LISA FRIEDSTEIN, JILL IANTONI)

S.B. LEXINGTON, INC. EMPLOYEE)

DEATH BENEFIT TRUST, S.T.P.)

ENTERPRISES, INC. S.B. LEXINGTON,)

INC., NATIONAL SERVICE)

ASSOCIATION (OF FLORIDA),)

NATIONAL SERVICE ASSOCIATION)

(OF ILLINOIS) AND JOHN AND JANE)

DOES)

Third-Party Defendants.)

Plaintiffs, pursuant to Local Rule 56.1, submit the following supplemental statement of uncontested material facts, including a supplemental appendix of exhibits hereto, in support of their motion for summary judgment.

I. INTRODUCTION

On March 27, 2015, Plaintiff's filed their initial statement of undisputed facts numbered 1-75, in support of their motion for summary judgment. [**Dkt. #150, Pltf's Statement of Undisputed Facts**]. Plaintiff's motion for summary judgment was denied. [**Dkt. #220**].

Now the Estate of Simon Bernstein (the "Estate") has filed its motion for summary judgment claiming that Plaintiff's cannot prove their claim to the Policy Proceeds and in the absence of a named beneficiary of the Policy, the Estate takes the Policy Proceeds by default.

In order to respond to and overcome the Estate's motion for summary judgment, Plaintiffs must again set forth the undisputed facts that support their claims. Within the last two months, Plaintiffs were able to obtain the Affidavit of Robert Spallina, Simon Bernstein's final estate planning attorney. Plaintiff served the affidavit upon all parties in this litigation on July 15, 2016. In the interest of clarity and economy, instead of submitting an entirely new statement of undisputed facts, Plaintiff is incorporating by reference its initial statement of undisputed facts and then filing this supplemental statement in order to set forth the additional undisputed facts contained in the Affidavit of Robert Spallina.

Plaintiffs recognize that its Initial Statement of Undisputed Facts contains references to certain testimony involving conversations between Plaintiffs (and interested persons) and the decedent that this court ruled were inadmissible under the Illinois Dead Man's Act. Plaintiffs' memorandum in opposition to the Estate's motion for summary judgment does not rely upon such excluded testimony.

II. PLAINTIFF'S SUPPLEMENTAL STATEMENT OF UNDISPUTED FACTS

76. In October of 2013, and then again in 2014 after the Estate intervened, Plaintiffs served all parties with Rule 26 disclosures which disclosed Donald Tescher and Robert Spallina (erroneously referred to at times as Ronald Spallina) and the law firm of Tescher & Spallina as potential witnesses in this matter. On July 15, 2016, Plaintiff served all parties in this litigation with the Affidavit of Robert Spallina who was Simon Bernstein's final estate planning attorney in the years before his death. Also, attached to the Affidavit of Robert Spallina are his contemporaneous notes from his 2012 estate planning meetings with Simon Bernstein to which he makes reference in his Affidavit. **(Ex. 37, Affidavit of Robert Spallina).**

77. Currently and for the past several years, there have been several actions pending in the Palm Beach County Court, Probate Division. Certain testamentary trusts (not the insurance trusts at issue here) and the Will of Simon Bernstein have been filed with and submitted to the Probate Court.

78. On December 15, 2015, after a bench trial was held, and where Eliot Bernstein appeared and represented himself *pro se*, Judge John L. Phillips entered an Order including the following:

- a. This was a "Final Judgment" on Count II of the Amended Complaint;
- b. A trial was held on December 15, 2015 pursuant to the Court's Order setting trial on Amended Complaint Count II;
- c. The Court received evidence in the form of documents and testimony of witnesses;
- d. The Court heard argument from counsel and *pro se* parties who wished to argue;
- e. The Court found that five testamentary documents, including the Will of Simon Bernstein and a Simon Bernstein Amended and Restated Trust Agreement dated July 25, 2012 are "genuine and authentic, and are valid and enforceable according to their terms."

- f. That based on evidence presented, “Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents...Ted S. Bernstein played no role in any questioned activities of the law firm of Tescher & Spallina, P.A., who represented Simon and Shirley when they were alive. There is no evidence to support the assertion of Eliot Bernstein that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided or abetted others in forging or fabricating documents. The evidence shows Ted Bernstein played no role in the preparation of any improper documents, the presentation of any improper documents to the Court, or any other improper act, contrary to the allegations of Eliot Bernstein.

- g. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure...” **(Ex. 38, Probate Order of 12/15/15, *Ted Bernstein, as Trustee of Shirley Bernstein Trust Agreement v. Alexandra Bernstein...Eliot Bernstein, et. al. No. 502014CP003698.*)**

Dated: August 24, 2016

Respectfully submitted,

/s/ Adam Simon

Adam Simon, Esq.

#6205304

303 East Wacker Drive

Suite 2725

Chicago, Illinois 60601

(312) 819-0730

Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)

**Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

**Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually,
Pamela B. Simon, Jill Iantoni, Lisa
Friedstein, David Simon, Adam Simon,
The Simon Law Firm, and STP
Enterprises, Inc.**

**SUPPLEMENTAL
APPENDIX TO PLAINTIFFS'
STATEMENT OF UNDISPUTED
MATERIAL FACTS IN SUPPORT OF
THEIR MOTION FOR
SUMMARY JUDGMENT**

N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)
_____)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)
_____)

Plaintiff's, pursuant to Local Rule 56.1, submit the following supplemental appendix to their statement of uncontested material facts in support of their motion for summary judgment:

EXHIBIT #	DESCRIPTION
1	Financial Activity from Issue Bates No. JCK001252-1259
2	Receipt from Registry of the Court for Policy Proceeds Bates No. BT000106
3	Part I of Application Bates No. JCK00419
4	VEBA Beneficiary Designation Bates No. BT000001
5	Specimen Policy Bates No. JCK001098-1117
6	Statement of Policy Cost and Benefit Info. Bates No. JCK001023-24
7	NSA Letter regarding change of VEBA Trustee Bates No. JCK000365
8	Capitol Bankers Request Letter, Confirmation and Cert. of Coverage Bates No. JCK000370, 372, 514 and 554
9	Secretary of State Database Screenshot-S.B. Lexington, Inc. Bates No. BT00027
10	Owner Change Confirmation Bates No. JCK000560
11	Capitol Bankers Request Letter and Owner Confirmation Bates No. JCK000566 and 563
12	Certificate of Death of Simon Bernstein Bates No. JCK001311
13	Application for Reinstatement Bates No. JCK00213-217
14	Confirmation of Reinstatement Bates No. JCK000294

EXHIBIT #	DESCRIPTION
15	Draft of Bernstein Trust with Meta Data Bates No. BT000002-000012
16	Draft of Bernstein Trust with handwritten notes Bates No. BT000014-000022
17	Diagram of Beneficiaries
18	Lincoln Benefit Policy Transfer of Ownership Bates No. BT000112
19	SS-4 Form for Bernstein Trust Tax I.D. Bates No. BT000104
20	Equifax Report Bates No. JCK001084
21	National Service Association, Illinois Secretary of State Screenshot
22	National Service Association, Florida Secretary of State Screenshot
23	Heritage Union Life Insurance Company Rule 12(b)(6) Motion to Dismiss
24	Will of Simon L. Bernstein Dated July 25, 2012
25	Plaintiff's First Amended Complaint
26	Eliot Bernstein's Answer, Counterclaims, Cross-Claims, and Third-Party Claims
27	Estate of Simon Bernstein's Intervenor Complaint
28	Insurer's Interpleader Complaint
29	Affidavit of Don Sanders

30	Affidavit of Ted Bernstein
31	Affidavit of Pam Simon
32	Affidavit of David Simon
33	Affidavit of Jill Iantoni
34	Affidavit of Lisa Friedstein
35	Transcript of Deposition of David Simon
36	Heritage Letter to Simon Bernstein
37	Affidavit of Robert Spallina w/notes
38	Probate Court Order Dated 12/15/15

EXHIBIT 37

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted S.)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)
Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95,)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, et al.,)

Third-Party Defendants.)
_____)

Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

AFFIDAVIT OF ROBERT L. SPALLINA

1. My name is Robert L. Spallina. I am over the age of eighteen, and if duly sworn I could competently and voluntarily testify to the facts set forth herein.

2. While he was alive, Simon L. Bernstein ("Simon Bernstein") was a client of my then law firm, Tescher & Spallina, P.A. ("Firm"). The Firm and I provided estate planning advice and represented Simon Bernstein in connection with the preparation and execution of various testamentary documents from late 2007 until his death on September 13, 2012.

3. At all times material to my representation of Simon Bernstein, I was an attorney admitted to practice in the state of Florida. I hold a Bachelor of Science in accounting from the University of Florida Fisher School of Accounting; a Juris Doctor from Loyola Law School in Los Angeles, California; and a Master of Laws Degree in Estate Planning from the University of Miami School of Law. I am a former Certified Public Accountant and Certified Financial Planner, and began my career with KPMG Peat Marwick in Los Angeles. I was admitted to the Florida Bar in 2001, and focused my practice on wealth transfer planning, post-mortem planning, probate and related matters for high net worth individuals and families.

4. Of relevance to this lawsuit concerning the proceeds of a life insurance policy, during the spring and early summer 2012, Simon Bernstein asked our Firm to assist him in modifying his testamentary documents. During this time, while discussing and reviewing his overall estate plan, Simon Bernstein and I specifically discussed the insurance policy at issue.

5. Simon Bernstein told me he owned a life insurance policy with a current death benefit of \$1.6 million (the "Policy"). This is reflected in my attached notes of a meeting with Simon Bernstein on February 1, 2012. During this meeting and over the course of the next few months, Simon Bernstein and I discussed the Policy as part of his estate planning.

6. Simon Bernstein told me that the intended beneficiaries of the Policy were his five children equally, through an irrevocable life insurance trust that was the named beneficiary of the

Policy. On February 1, 2012, Simon Bernstein was considering giving part of the Policy proceeds to his girlfriend, Maritza Puccio. My notes reflect discussion of an increasing scale for Maritza:

0-2 yrs	250k
2-4 yrs	500k
>4 yrs	600k

7. I advised Simon Bernstein against changing the beneficiaries of his Policy to include Maritza, and ultimately (even though Simon Bernstein requested a form to change the beneficiaries) Simon Bernstein decided to leave the beneficiary unchanged.

8. Simon Bernstein also wanted to change other parts of his estate plan in 2012. Primarily, he wanted to change his current estate plan which benefitted only three of his five children; and had caused some family disharmony. As part of these discussions, Simon Bernstein and I again discussed the Policy. In the end, Simon Bernstein told me he had decided to leave the Policy unchanged, so that all of the proceeds would go equally to his five children through the 1995 Trust. Having thus provided for all of his children; Simon Bernstein decided to alter his testamentary documents and to exercise a power of appointment he held to leave all of his family's wealth to his ten grandchildren equally.

9. As soon as Simon Bernstein made that decision, he instructed me to set up a conference call with his children. Simon Bernstein told them during the call that he had decided to leave all of the money to the ten grandchildren. He did not discuss the Policy during that call, but Simon Bernstein and I had specifically discussed the Policy as part of our estate planning discussions.

10. Simon Bernstein never showed me the 1995 Trust, although we discussed several times the fact that (i) the 1995 Trust had been created and, (ii) now that his wife had died, the beneficiaries of the 1995 Trust were his five adult children: Ted, Pam, Eliot, Jill and Lisa, each of whom would receive one-fifth, or 20%, of the proceeds of the Policy. In 2012, Simon Bernstein made no changes to the Policy's ownership or beneficiary.

11. In light of Simon Bernstein's overall estate plan, including our specific discussions about the beneficiaries of the proceeds of the Policy, Simon Bernstein in fact executed new testamentary documents. Under Simon Bernstein's new Will and his Amended and Restated Trust Agreement, both of which were formally executed on July 25, 2012, his ten grandchildren are the ultimate beneficiaries of all of his wealth other than the Policy, which I have no doubt he intended to go to his children.

12. The final testamentary documents Simon Bernstein signed on July 25, 2012, were the last ones Simon Bernstein signed before he died on September 13, 2012.

13. Based upon my direct and personal involvement in meeting and discussing matters with Simon Bernstein, and my personal knowledge of Simon Bernstein's testamentary documents and his stated intent, I believe that Simon Bernstein was aware of and believed that the 1995 Trust existed and was named as the sole beneficiary of the Policy, or that Simon Bernstein was aware of and believed that the beneficiaries of the 1995 Trust (given that his wife had passed away) were his five adult children, who would each receive 20% of the life insurance proceeds.

14. Having discussed these matters with Simon Bernstein, and based upon my years of experience as an estate planning lawyer, Simon Bernstein understood that he retained ownership of the Policy. Simon Bernstein always wanted maximum flexibility to change his estate plan, and

putting ownership of the Policy into an irrevocable trust (such as the 2000 trust drafted by lawyers at Proskauer Rose) would have taken away Simon Bernstein's ability to change the Policy or the beneficiaries. Because Simon Bernstein remained the owner of the policy, he had the ability to change the beneficiary from the ILIT to a different beneficiary or beneficiaries up until the moment he died.

15. I also know from discussions with Simon Bernstein that he was aware of asset protection issues and was aware that the Policy proceeds would be exempt from his creditors, even if Simon Bernstein owned the Policy on the date of his death. Simon Bernstein would not have desired or intended to subject the proceeds of the Policy to claims of his creditors.

16. Further, I know from discussions with Simon Bernstein that he was aware of avoiding probate of assets. Under the structure he and I discussed, in which the beneficiary of the Policy was the 1995 Trust, the proceeds of the Policy would pass outside of probate. Simon Bernstein would not have desired or intended to subject these assets to probate, so if the 1995 Trust did not exist, I would have advised (and I believe Simon Bernstein would have followed my advice) that a new Trust document be drafted and executed at the same time as Simon Bernstein's new testamentary documents on July 25, 2012.

17. Above all else, I know from discussions with Simon Bernstein that he wanted to shield all of his assets from creditors, and in fact he was sued by William Stansbury shortly before his death. Stansbury was a former shareholder with Simon Bernstein in a business, and Simon Bernstein felt betrayed by Stansbury having sued Simon Bernstein.

18. Simon Bernstein removed Stansbury as a fiduciary when he executed new testamentary documents on July 25, 2012, and I do not believe Simon Bernstein would have allowed

the Policy to be subjected to creditors' claims, especially Stansbury, by misrepresenting to me that a 1995 Trust existed if one did not.

19. Based upon the foregoing, I believe that Simon Bernstein intended the Policy proceeds to be paid to his 1995 Trust, for the benefit of his five children.

FURTHER AFFIANT'S SAYETH NAUGHT.




Robert Spallina

^{July}
Dated: June 1, 2016

SUBSCRIBED AND SWORN TO BEFORE ME THIS 1 DAY OF ^{July} JUNE, 2016, by ROBERT SPALLINA, who is personally known to me or provided the following identification: _____



Alexa Collevecchio
COMMISSION # FF185462
EXPIRES: December 28, 2018
WWW.AARONNOTARY.COM


NOTARY PUBLIC
County of Palm Beach, FL

Si Penworth

JE/KLF

2/1/12

SIPC - Penworth	-	500K
LIC Penworth	-	100K
Gift		<u>600K</u>

LOANS	Si's Estate	Value	Estate Tax
1.2M JON	- LLP -	1.15	.8M
.5M WF	- IRA -	.75	.25M
			<u>1.05M</u>

Si's Estate

Si's Estate	Tax	FMV
- Charms	- 1.0M	2.0M
- House	- 1.0M	3.0M
- 1/2 LLP	- 1.15M	.8M
		<u>5.8M</u>

LIC

- 750	45	
- 50	33	Value (Total)
- 60	12	
- 200	10	
	<u>100</u>	575

Si's Estate	1.75M	→	250k	750: Pen Charms
Monica	→	0-2 yrs	250k	
		2-4 yrs	50k	
		4 yrs	500k	

EXHIBIT 38

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of his minor children D.B., Ja. B. and Jo. B.;
JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;
LISA FRIEDSTEIN, Individually, as Trustee f/b/o
Max Friedstein and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her
minor child, C.F.,

Defendants.

FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT

This cause came before the Court for trial on December 15, 2015, pursuant to the Court's
ORDER SETTING TRIAL on AMENDED COMPLAINT (DE 26) COUNT II dated September 24,
2015. The Court, having received evidence in the form of documents and testimony of witnesses,

COPY

having heard argument of counsel and *pro se* parties who wished to argue, and being otherwise fully advised of the premises, hereby enters a Final Judgment as to Count II of the Amended Complaint:

1. This is an action for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- A. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached to the Amended Complaint as Exhibit A~~3~~, *EX. P2 AT TRIAL*) JB
- B. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", attached to the Amended Complaint as Exhibit B~~3~~, *EX. P3 AT TRIAL*) JB
- C. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", attached to the Amended Complaint as Exhibit C~~3~~, *EX. P4 AT TRIAL*) JB
- D. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", attached to the Amended Complaint as Exhibit D~~3~~, *EX. P5 AT TRIAL*), *and* JB
- E. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", attached to the Amended Complaint as Exhibit E~~3~~, *EX. P1 AT TRIAL*) JB

(collectively, the "Testamentary Documents").

2. Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, and are valid and enforceable according to their terms.

3. The Court finds that Simon's Testamentary Documents were signed by Simon and Shirley's Testamentary Documents were signed by Shirley, in the presence of two attesting witnesses who signed in the presence of the testator and in the presence of each other. § 732.502, Fla. Stat.; § 736.0403(2)(b), Fla. Stat.

4. The Court finds the Testamentary Documents meet the requirements for self-proof, as specified in §732.503, Fla. Stat. Alternatively, the Testamentary Documents were properly admitted based upon the testimony of at least one of the attesting witnesses, which occurred. §733.201, Fla. Stat.

5. Based on the evidence presented, the Court finds that Plaintiff, Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents. ~~Indeed,~~ Ted S. Bernstein had never seen the documents before his father's death. ~~Moreover,~~ Ted S. Bernstein played no role in any questioned activities of the law firm Tescher & Spallina, PA, who represented Simon and Shirley while they were alive. There is no evidence to support the assertions that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided and abetted others in forging or fabricating documents. ~~Thus,~~ Ted Bernstein played no role in the preparation of any improper documents; the presentation of any improper documents to the Court; or any other improper act, contrary to the allegations of Eliot Bernstein, ~~made in the pleadings in this case or in various blogs and websites in which Eliot Bernstein has attacked the actions of Ted Bernstein.~~

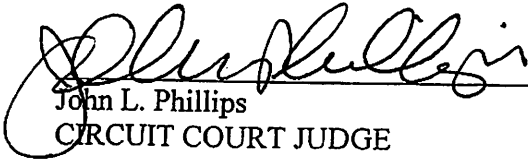
JB
JB
JB
JB
JB

6. Based on the evidence presented, the Court finds that an unauthorized version of the First Amendment to Shirley Bernstein Trust Agreement was prepared sometime after Simon died. This document (Pl. Ex. 6) was not signed by Shirley Bernstein and, therefore, is not an operative document.

7. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure, determining the validity of Testamentary Documents, denying any objection to the probate of Shirley's and Simon's Wills or the validity of the Trust Agreements, and determining which persons are entitled to receive distributions from these trusts and estates.

8. Based upon the rulings made by the Court in this trial of Count II, the Court reserves jurisdiction to determine the remaining issues in this action.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 16 day of December, 2015.


John L. Phillips
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

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and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
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Eric Bernstein, Michael Bernstein

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

**Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

**Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually,
Pamela B. Simon
("Plaintiffs")**

**PLAINTIFFS' SUPPLEMENTAL
STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF THEIR MOTION FOR
SUMMARY JUDGMENT**

Third-Party Defendants.)
 _____)
)
 ELIOT IVAN BERNSTEIN,)
)
 Cross-Plaintiff)
)
 v.)
)
 TED BERNSTEIN, individually and)
 as alleged Trustee of the Simon Bernstein)
 Irrevocable Insurance Trust Dtd, 6/21/95)
)
 Cross-Defendant)
 and,)
)
 PAMELA B. SIMON, DAVID B.SIMON,)
 both Professionally and Personally)
 ADAM SIMON, both Professionally and)
 Personally, THE SIMON LAW FIRM,)
 TESCHER & SPALLINA, P.A.,)
 DONALD TESCHER, both Professionally)
 and Personally, ROBERT SPALLINA,)
 both Professionally and Personally,)
 LISA FRIEDSTEIN, JILL IANTONI)
 S.B. LEXINGTON, INC. EMPLOYEE)
 DEATH BENEFIT TRUST, S.T.P.)
 ENTERPRISES, INC. S.B. LEXINGTON,)
 INC., NATIONAL SERVICE)
 ASSOCIATION (OF FLORIDA),)
 NATIONAL SERVICE ASSOCIATION)
 (OF ILLINOIS) AND JOHN AND JANE)
 DOES)
)
 Third-Party Defendants.)
 _____)

NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995, by Ted Bernstein, as Trustee, Ted Bernstein, individually, and Pamela Simon (“Plaintiffs”), by and through their undersigned counsel, and respectfully submit this memorandum of law in opposition to the motion for summary judgment filed on behalf of the Estate of Simon Bernstein (the “Estate”).

I. FACTUAL BACKGROUND

A. THE PARTIES

Please see **SoF ¶¶1-¶25** for a review of the identity and status of the parties.¹

B. THE POLICY

The Policy was originally purchased from Capitol Bankers by the VEBA in December of 1982 to insure the life Simon Bernstein. The “Policy” was issued as Policy No. 1009208 with an original sum insured of \$2,000,000.00. (**SoF ¶26; Ex. 5**)

C. THE INSURED

Simon Bernstein was the Insured under the Policy. Shirley, his spouse, predeceased Simon Bernstein. The identity of the Insured is not in dispute, nor does anyone dispute that the Insured passed away on September 13, 2012. (**SoF, ¶26, ¶52, ¶68; Ex. 12**)

D. THE INSURER

The Insurer of the Policy changed over the life of the Policy from time to time through corporate succession. The Insurer has been previously dismissed from this case after having deposited the Policy Proceeds with the Registry of the Court. Prior to its dismissal, the Insurer did not dispute either the existence of the Policy or its liability for the Policy Proceeds following the death of the insured. (**SoF ¶11**)

E. THE POLICY PROCEEDS (THE “STAKE”)

In the Insurer’s Complaint for Interpleader, the Insurer represented that the net death benefit payable under the Policy on the date of Simon Bernstein’s death was \$1,689,070 (less an

¹ Pursuant to Local Rule 56.1, Plaintiffs filed their original statement of uncontested facts for their initial motion for summary judgment on March 27, 2015 [**Dkt. #150**]. Plaintiffs have now filed a Supplemental Statement of Uncontested Material Facts simultaneously herewith. Collectively, Plaintiff’s Statements of Uncontested Facts and the Supplemental Statement of Facts are referred to herein as (“**SoF**”).

outstanding policy loan). (**Ex. 28 at ¶17**). In its Rule 26 disclosures and in the Affidavit of Don Sanders, the Insurer provided documentation and testimony verifying the amount of the Policy Proceeds. No objections were made by any Party to this litigation regarding the amount of the Policy Proceeds that the Insurer deposited with the Registry of the Court. (**SoF ¶11**)

F. THE POLICY PROVISIONS ON BENEFICIARIES

The Policy provisions which set forth both the definitions of a beneficiary under the Policy, and the requirements for naming or changing a beneficiary of the Policy are the controlling factors in making the determination as to whom is the beneficiary of the Policy Proceeds. *Bank of Lyons v. Schultz*, 22 Ill.App.3d 410, 415, 318 N.E.2d 52, 57 (1st Dist., 1974) *citing* 2 Appelman, Insurance Law and Practice §921 (1966). In this instance, the Policy defines “Beneficiary” as follows:

A Beneficiary is any person *named on our* [the Insurer’s] *records* to receive proceeds of this policy after the insured dies. There may be different classes of Beneficiaries, such as primary and contingent. These classes set the order of payment. There may be more than one beneficiary in a class. Unless you provide otherwise, any death benefit that becomes payable under this policy will be paid in equal shares to the Beneficiaries living at the death of the Insured. Payments will be made successively in the following order: (emphasis added)

- a. Primary Beneficiaries.
- b. Contingent Beneficiaries, if any, provided no primary Beneficiary is living at the death of the Insured.
- c. The Owner or the Owner’s executor or administrator, provided no Primary or Contingent Beneficiary is living at the death of the Insured.

Any Beneficiary may be named an Irrevocable Beneficiary. An irrevocable beneficiary is one whose consent is needed to change that Beneficiary. Also, this Beneficiary must consent to the exercise of certain other rights by the Owner. We discuss ownership in part 2. (**SoF, ¶26; Ex. 5 at bates no. JCK00101**).

Here, the application for the Policy indicates that initial Policy Owner designated “First Arlington Bank, Trustee of S.B. Lexington Employee Death Benefit Trust” [the “VEBA”] as the

Beneficiary of the Policy. This was accomplished by the Policy Owner completing the beneficiary section of the application. **(SoF, ¶28)**.

The Policy also includes the Insurer's requirements for the Policy Owner to effectuate a change of beneficiary. With regard to changing the beneficiary, the Policy provides as follows:

The Owner or any Beneficiary may be changed during the Insured's lifetime. We do not limit the number of changes that may be made. *To make a change, a written request, satisfactory to us, must be received at our Business Office.* The change will take effect as of the date the request was signed, even if the Insured dies before we receive it. Each change will be subject to any payment we made or other action we took before receiving the request. **(Ex. 5 at bates #JCK00103)**. (emphasis added).

G. THE DESIGNATED BENEFICIARIES OF THE POLICY

According to the records of the Insurer, the last change of Beneficiaries was submitted to the Insurer by the Policy Owner on or about November 27, 1995. **(SoF, ¶33)**. As a result of that last change of Beneficiaries, the Beneficiaries of the Policy proceeds designated by the Owner as of the Insured's date of death (Sept. 13, 2012), were as follows: LaSalle National Trust, as Successor Trustee (primary beneficiary), and Simon Bernstein Irrevocable Insurance Trust dtd June 21, 1995 (contingent beneficiary). **(SoF, ¶33 and ¶34)**

The VEBA was an employee benefit plan that provided death benefits to the beneficiaries of the S.B. Lexington VEBA plan participants. The Policy was initially purchased by the VEBA and at Policy issuance the VEBA was both Policy Owner and Primary Beneficiary. **(SoF, ¶27 and ¶28)**. As part of the VEBA, the plan participant (an S.B. Lexington Employee), was authorized to designate his/her intended beneficiary of their death benefit under the VEBA. Simon Bernstein, as a plan participant, executed a beneficiary designation form for the death benefits provided through the VEBA. In August of 1995, Simon Bernstein designated the

“Simon Bernstein Irrevocable Insurance Trust” as his beneficiary for the death benefit provided through the VEBA. **(SoF, ¶32; Ex. 4)**

Simon Bernstein’s beneficiary designation form which contains his designation of the Bernstein Trust as his beneficiary for the VEBA death benefit provides extremely strong corroborating evidence of both (i) the existence of the Bernstein Trust; and (ii) Simon Bernstein’s intent that the beneficiary of the Policy is the Bernstein Trust. **(SoF, ¶32; Ex. 4).**

Plaintiffs also submit a simple diagram **(Ex. 17)** which is referred to and explained in **Ex. 30, Aff. of Ted Bernstein at ¶105-¶106**. This diagram illustrates that whether the Policy Proceeds were paid to the Primary Beneficiary -- the VEBA-- or the Contingent Beneficiary -- the Bernstein Trust, the result is the same. Ultimately, the Policy Proceeds are to be paid to the Bernstein Trust. **(SoF, ¶44)**

In 1998, S.B. Lexington was voluntarily dissolved and the VEBA terminated at the same time. In conjunction with this dissolution, the ownership of the Policy was also changed in 1998 from the VEBA to Simon Bernstein. So, as of 1998, it is undisputed that the Primary Beneficiary under the Policy, the VEBA, had ceased to exist, and thus the sole surviving beneficiary was the contingent beneficiary, the 1995 Bernstein Trust. **(SoF ¶21 and ¶36)**

ARGUMENT

A. STANDARDS

Plaintiffs incorporate by reference the summary judgment standards set forth by the court in its Order of March 16, 2016. **[Dkt. #220 at p.1-2].**

B. GOVERNING LAW

Where an insurance policy is the result of an application to an agent of the insurance company within a state, the policy after having been issued, delivered by the company's agent within the state, and the premiums paid by the insured within the state to the company, the policy becomes a contract of that state, subject to the applicable laws of said state. Where the most significant contacts of the contract are made, the applicable law of that place is controlling.

Minnesota Mut. Life Ins. Co. v. Sullivant, 334 F.Supp 346, 349 (1971), citing *New York Life Ins. Co. v Head*, 234 U.S. 149, 34 S.Ct. 879, 58 L.Ed. 1259 (1914).

Here, the law of the state of Illinois controls because it is undisputed that the first Policy Owner, the VEBA, was domiciled at the offices of its Bank Trustee located in Illinois. Simon Bernstein was the agent who sold the Policy and it is undisputed that when he sold the Policy he was a citizen of the state of Illinois, and the Policy would have been delivered to the Owner in the state of Illinois. Simon Bernstein was also the insured under the Policy and the application was signed in Illinois. (SoF ¶28). In short, all of the significant contacts with regard to the application, sale and delivery of the Policy occurred in Illinois. Also, the affidavit of David Simon and the drafts of the 1995 Bernstein Trust indicate it was drafted in Illinois, by Illinois counsel pursuant to Illinois law.

C. THE SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED JUNE 21, 1995 (THE "1995 BERNSTEIN TRUST")

As set forth above, the last named Contingent Beneficiary of the Policy was the Bernstein Trust. One of the reasons the Insurer refused to pay the Policy Proceeds to the Bernstein Trust upon presentation of the death claim was because no one has been able to locate an original or copy of an executed trust agreement for the Bernstein Trust. (SoF ¶45). But, Plaintiffs in their

Statement of Undisputed Facts set forth a comprehensive and cohesive bundle of evidence, including signed documentation from both the settlor and the initial trustee of the Bernstein Trust evidencing the existence of the Bernstein Trust. In addition, Plaintiffs have supplemented their submissions and statement of undisputed facts with the affidavit of Robert Spallina, Simon Bernstein's final estate planning attorney.

Earlier in this litigation, Plaintiff's ability to secure the testimony of Mr. Spallina was impeded. Mr. Spallina was the subject of an SEC investigation resulting in an SEC Complaint being filed and then promptly resolved in September of 2015. Subsequently, Mr. Spallina voluntarily placed his Florida Law License on inactive status. Mr. Spallina's legal issues have been sufficiently resolved such that Plaintiffs have now been able to secure Mr. Spallina's affidavit. Mr. Spallina's sworn testimony is crucial because it comes from an uninterested party whose testimony is not barred by the Illinois Dead Man's Act. Mr. Spallina's affidavit also includes corroborating evidence in his contemporaneous notes which are attached to his affidavit.

In his affidavit, Mr. Spallina attests as follows:

- a. That beginning in 2007 until his death, Mr. Spallina and his law firm provided estate planning advice and represented Simon Bernstein.
- b. That in the spring and early summer of 2012, Simon Bernstein consulted Mr. Spallina to review his estate plan.
- c. That Simon Bernstein informed him that he had formed the 1995 Bernstein Trust and that the 1995 Bernstein Trust was the beneficiary of a life insurance policy with a death benefit of \$1.6 million. Simon Bernstein informed him that the beneficiaries of the 1995 Bernstein were Simon Bernstein's five children.
- d. That Simon Bernstein discussed making changes to the beneficiary of the insurance policy, but Mr. Spallina advised him against it, and Simon Bernstein left the beneficiary unchanged.

- e. That Simon Bernstein purposefully never transferred ownership or changed the beneficiary of the Policy to the 2000 Trust that had been drafted by an attorney for Proskauer Rose. Simon Bernstein decided to retain ownership and control of the Policy himself.
- f. That Simon Bernstein made changes to his Estate plan in 2012 to provide that the assets in his estate would skip a generation and would go to his ten grandchildren and not his five children.
- g. That Simon Bernstein informed Robert Spallina that he intended for his life insurance Policy proceeds to pass ultimately to his five children, in equal shares, through the irrevocable trust that was the named beneficiary of the Policy.
- h. That having discussed these matters with Simon Bernstein, it was evident to Mr. Spallina that Simon Bernstein understood the benefits of retaining ownership and control of the policy in his own name, and also understood the asset protection and administrative benefits of forming and naming an irrevocable trust -- the 1995 Bernstein Trust -- as the beneficiary of the Policy. **(SoF, ¶¶76-¶78, Ex. 37, Affidavit of Robert Spallina).**

The Illinois Dead-Man's Act does not bar the testimony of a decedent's attorney regarding conversations with decedent about his testamentary intent, his will or estate plan. *In re Estate of Sewart*, 274 Ill.App.3d 298, 652 N.E.2d 1151, 210 Ill.Dec. 175 (5th Dist., 1995).

In *Sewart*, the court reasoned as follows:

Synek's testimony was not barred by the Dead-Man's Act for several reasons. First, as the trial court found, Synek was not an interested person. Synek would not gain or lose as an immediate and direct result of the suit. (See *In re Estate of Henke* (1990), 203 Ill.App.3d 975, 149 Ill.Dec. 36, 561 N.E.2d 314; *Michalski v. Chicago Title & Trust Co.* (1977), 50 Ill.App.3d 335, 8 Ill.Dec. 416, 365 N.E.2d 654.) Synek's right to recover fees against the estate was not contingent upon his successful defense of the estate. Moreover, Synek was not testifying on his own behalf. (See 735 ILCS 5/8-201 (West 1992))

In *Michalski*, the court enforced the transfer of interests in real estate to Plaintiffs even though the deeds were missing and unrecorded. The court allowed the testimony of the decedent's attorney regarding decedent's intent to transfer the real estate to plaintiffs over the defendant's objection made pursuant to the Dead-Man's Act. The trial court, sitting without a jury, allowed the testimony finding decedent's attorney was not an interested person for purposes

of the Dead Man's Act. The court rejected defendant's argument that the possibility of a legal malpractice claim somehow made the attorney directly interested in the outcome. The Trial Court's holdings on both the evidentiary ruling on the application of the Dead Man's Act and the judgment for Plaintiff were unanimously affirmed. The reviewing court agreed that despite the missing and unrecorded deeds, Plaintiff's evidence was "overwhelming" and sufficient to satisfy the applicable burden of proof of clear and convincing evidence. *Michalski v. Chicago Title and Trust Co.*, 50 Ill.App.3d 335, 365 N.E.2d 654, 8 Ill.Dec. 416 (2nd Dist., 2011).

All of the same factors that made the attorneys' testimony admissible in the Illinois case law cited above apply to Mr. Spallina's sworn testimony in this matter. Mr. Spallina is not an interested person, and has nothing to gain or lose as a direct result of the outcome of this litigation which relates only to the determination of the beneficiary of certain life insurance proceeds in which Spallina claims no interest.

Plaintiffs have also provided sworn witness testimony and unexecuted drafts of the Bernstein Trust Agreement establishing the terms and beneficiary of the Bernstein Trust. Further, Plaintiffs have attached affidavits of four of Simon Bernstein's adult children accounting for 4/5ths of the beneficiaries of the Bernstein Trust, and these 4/5ths are all in agreement with regard to the terms of the Bernstein Trust and intent of the Settlor. It is also important to note that this is not a case where the four consenting beneficiaries are trying to exclude the fifth beneficiary. Instead, the four consenting beneficiaries seek distribution of the Policy Proceeds to all five children of Simon Bernstein as beneficiaries, *including Eliot Bernstein*.

D. THE 1995 BERNSTEIN TRUST WAS FORMALLY ESTABLISHED BY SIMON BERNSTEIN AS AN EXPRESS TRUST.

In *Butler*, the Iowa Supreme Court cited to an extensive array of case law on the subject of the establishment of express trusts including several applicable citations to Illinois law and reviewed the following pronouncements:

“Neither a statement by the settlor, nor a formal written declaration is essential to establish a trust”. The court continued, “Whether a trust has been perfectly created is largely a question of fact in each case, and the court in determining the fact will give efficacy to the situation and relation of the parties, the nature and situation of the property, and the purpose and objects which the settlor had in view.” *Butler v. Butler*, 253 Iowa 1084, 1113, 114 N.W.2d, 595, 612 (1962) citing Perry on Trusts and Trustees, 7th Ed, vol. 1, p.124.

Next, the *Butler* court cited the Illinois Supreme Court case *McDiarmid* as follows:

“In support of their contention that they have proved an express trust appellees rely on our holdings in *Kingsbury v. Burnside*, 58 Ill. 310, 11 Am.Rep. 67, and many other decisions, including *Whetsler v. Sprague*, 224 Ill. 461, 79 N.E. 667, supra. These decisions hold that the statute of frauds has been complied with if the trustee makes a memorandum or writing showing that the property is held in trust. *The details of the trust may be established aliunde and even by parol evidence.*” *Butler*, 235 Iowa 1084, 1114, 114 N.W.2d 595, (1962) citing *McDiarmid v. McDiarmid*, 368 Ill. 638, 15 N.E.2d 493 (1938)

The *Butler* court also held that an express trust may be proven by a writing signed by the grantor or trustee of the trust, but not from its cestui que. *Holmes v. Holmes*, 65 Wash. 572, 118 P. 733, 734 (1911), Pomeroy’s Eq. Jur. (3 Ed.) §1007. The court also set forth certain legal principles regarding the Settlor’s manifestation of his intent to create a trust. The court stated:

“Except as otherwise provided by statute, the manifestation of intention to create a trust may be made by written or spoken words or conduct. No particular form of words or conduct is necessary for the manifestation of intention to create a trust.(cites omitted) Acts prior to and subsequent to, as well as acts contemporaneous with the manifestation which it is claimed creates a trust, may be relevant in determining the settlor’s intention to create a trust.” *Butler*, 235 Iowa 1084, 1113, 114 N.W.2d 595, 613 (1962)

Since an interest in real property is not at issue here, the Statute of Frauds is not applicable. But, even if it were, Plaintiffs' have provided ample evidence in the form of signed writings by both the Settlor and Trustee which establish the existence of the Bernstein Trust as an express trust. As far as written evidence which establishes the formation and existence of the Bernstein Trust, Plaintiffs submit the following:

1. The VEBA Beneficiary Designation form is critically important because it (i) contains the signature of the Simon Bernstein, (ii) refers to the "Simon Bernstein Irrevocable Insurance Trust", and (iii) memorializes Simon Bernstein's intent that the Policy Proceeds were to be paid to the Bernstein Trust. **(SoF, ¶32)**. Under the case law discussed above, this document alone is sufficient evidence of the establishment and existence of the Bernstein Trust.
2. The SS-4 Form used to obtain the Federal Tax Identification Number for the Bernstein Trust is also conclusive evidence of the formation of the Bernstein Trust. The SS-4 Form contains reference to the "Simon Bernstein Irrevocable Insurance Trust", and is signed and dated on June 21, 1995 by the initial trustee of the Bernstein Trust, Shirley Bernstein. **(SoF, ¶41)**. As discussed above, the signature of a Trustee is also sufficient on its own to evidence the establishment of a trust.
3. The Beneficiary Designation Forms for the Policy submitted by the Policy Owner designates the Bernstein Trust as a Contingent Beneficiary. **(SoF, ¶33 and ¶34)**
4. The unexecuted versions of the Bernstein Trust Agreement provide evidence of the Settlor's intent to form the trust. This document also establishes the terms of the "irrevocable trust". According to both drafts of the Bernstein Trust Agreement, the beneficiaries of the Bernstein Trust are the five children in equal shares. **(SoF, ¶50)**
5. The change of owner form signed by Simon Bernstein on August 8, 1995 which transferred his ownership interest in the Lincoln Policy to the Bernstein Trust. This document contains the full name of the Bernstein Trust, the tax identification number of the Bernstein Trust as reflected on the IRS SS-4 form, and it identifies the initial trustee, Shirley Bernstein.

In addition to the documentation produced in this case, Plaintiffs have proffered corroborating parole evidence of Simon Bernstein's intent to i) form the Bernstein Trust: (ii) designate the Bernstein Trust as the beneficiary of the Policy proceeds; (iii) designate his wife Shirley Bernstein, as initial trustee, and his son Ted, as successor trustee; and (iv) designate his

five children as beneficiaries of the Bernstein Trust. Such additional evidence includes the following:

- a) Affidavit of Don Sanders, Asst. Vice-President of Operations of the Insurer
- b) Affidavit of Ted Bernstein (revise to include his current appointments and approvals)
- c) Affidavit of Pam Simon
- d) Affidavit of Jill Iantoni
- e) Affidavit of Lisa Friedstein
- f) Affidavit of David B. Simon
- g) Deposition of David B. Simon
- h) Affidavit of Robert Spallina

E. PLAINTIFFS HAVE SET FORTH UNDISPUTED EVIDENCE THAT THE BENEFICIARY OF THE POLICY PROCEEDS IS THE BERNSTEIN TRUST.

Plaintiffs have submitted a simple diagram marked as **Ex. 17** in their Appendix of Exhibits. In his Affidavit (**Ex. 30 at ¶106**), Ted Bernstein explains the diagram and how it illustrates Simon Bernstein's intent with regard to the Policy Proceeds. This diagram shows that when Simon Bernstein executed the VEBA Member Beneficiary Form in 1995, just months after he formed the Bernstein Trust, he expressed his intent in a signed writing that the Policy Proceeds should be paid to the VEBA and then flow through to the Bernstein Trust (**Ex. 17, Option A**). In a belt in suspenders approach, the Bernstein Trust was also named contingent beneficiary of the Policy as illustrated in the diagram. So, if the Insured survived the primary beneficiary--which he did in this case--the Policy Proceeds would still be paid to the Bernstein Trust as contingent beneficiary (**Ex. 17, Option B**). (**SoF, ¶44**).

Simon Bernstein spent most of his career as a life insurance agent and owner and operator of life insurance agencies and brokerages. (**SoF, ¶46**). Simon Bernstein knew what was required to change an owner or beneficiary of a life insurance policy, and that the terms of the life insurance contract, and records of the insurer determine the beneficiary of the Policy

Proceeds. Approximately a year before his death, Simon Bernstein completed the necessary paperwork and submitted the required premium to reinstate the Policy after it had lapsed. In doing so, Simon Bernstein made no changes to the owner or beneficiary of the Policy when he transmitted the forms to the Insurer. **(SoF, ¶44).**

F. THE ESTATE OF SIMON BERNSTEIN'S INTERVENOR COMPLAINT

Benjamin Brown, as personal representative of the Estate of Simon Bernstein (the "Estate") was granted leave to intervene in this litigation on July 28, 2014 **(SoF, ¶25)**. But, intervenor's complaint does not set forth a conflicting claim to the Policy Proceeds with any affirmative evidence that the Estate was either a primary or contingent beneficiary of the Policy. Instead the complaint merely sets forth the Estate's assertion that if all other claimants fail to establish a claim to the Policy Proceeds, then the Policy Proceeds should be paid to the Estate by default. So, when reviewing this motion the court should look at the facts and submissions and resolve all doubt in favor of the non-moving party, the Plaintiffs. If the court determines that Plaintiffs submissions provide sufficient support for their claims to the Policy Proceeds such that a triable issue of fact remains, then the court must deny the Estate's motion.

It is also important for the court to take a step back and look at what the Estate is trying to accomplish here. The 2012 Will of Simon Bernstein, determined by the Florida court to be valid and enforceable according to its terms, is the controlling document governing the Estate and its actions. **(SoF, ¶79)**. The Estate should be enforcing the "WILL" of Simon Bernstein, but instead the personal representative is doing his level best to subvert it. A Will, by its very nature, is a legal instrument designed to express one's intent. Simon Bernstein's Will contains a provision expressly reaffirming his beneficiary designations and his *intent* that any proceeds of an

insurance contract be paid to the designated beneficiary of that contract. (SoF ¶68). Despite this proclamation of the testator's intent, the Estate in this litigation is acting in direct contravention and with total disregard for the intent of the testator as expressed in his last Will, and in his beneficiary designations.

G. THE ULTIMATE BENEFICIARIES OF THE POLICY PROCEEDS.

On March 15, 2016, this court entered an Order denying Plaintiff's motion for summary judgment. But in the Order, this court noted that "if the Trust was established as Plaintiffs claimed they would entitled to summary judgment." Thus, the court has effectively narrowed the remaining issues in this litigation to the existence and terms of the Trust. The identity of the only *surviving* beneficiary named on the records of the insurer is not in dispute, and that beneficiary is the 1995 Bernstein Trust. The fact that the 1995 Bernstein Trust was named as the contingent beneficiary of the Policy during the life of the owner and insured and remained that way until his death is further evidence in and of itself of the intent of Simon Bernstein to create the Trust. Simon Bernstein's Will executed in 2012, just months before his death, contains further documented evidence of his intent that the Policy proceeds should be distributed *not through his Will or Estate* but through the named beneficiary of his insurance policies.

To further corroborate Simon Bernstein's intent which resulted in his estate plan, Plaintiffs attach the affidavit of Robert Spallina. Plaintiff was previously impaired in their ability to obtain Mr. Spallina's affidavit due to legal issues Mr. Spallina was facing ultimately resulting in SEC civil penalties. The allegations related to trades of shares of a public company Mr. Spallina and others made after meeting with clients of their law firm for estate planning purposes. Subsequently, Mr. Spallina voluntarily placed his Florida law license on inactive

status. The SEC matters do not involve to any of the parties or issues either the instant litigation or the Florida Probate Litigation.² In his sworn affidavit, Mr. Spallina confirms that he could competently testify to the following facts:

- a. That Mr. Spallina, and the law firm of Tescher & Spallina, P.A. represented Simon Bernstein in connection with his estate planning and the preparation and execution of various testamentary documents from late 2007 until Simon Bernstein's death on September 13, 2012.
- b. That Mr. Spallina met with Simon Bernstein in the early spring and summer of 2012 to discuss Simon Bernstein's estate plan and to execute certain new testamentary documents to effectuate parts of that plan while retaining the existing beneficiary designation for the Policy at issue.
- c. That Mr. Spallina's contemporaneous handwritten notes from his 2012 meetings including notes and testimony relating to the \$1.6 million life insurance Policy and Simon Bernstein's intent to have those Policy proceeds flow through the Bernstein Trust to his five children, equally.
- d. Mr. Spallina testified about Simon Bernstein having considered changing the beneficiary designation of the Policy to include Simon Bernstein's then girlfriend. Mr. Spallina testified to the fact that he advised Simon Bernstein against making such change and that Mr. Bernstein heeded that advice. As a result, no change to the beneficiary designation was submitted to the Insurer.
- e. That Mr. Spallina was never shown the 1995 Trust by Simon Bernstein, but, he discussed on several occasions with Simon Bernstein that the ultimate intended beneficiaries of the Policy proceeds was his five children equally.
- f. That Mr. Spallina had discussions with Simon Bernstein regarding the flexibility he retained by retaining ownership of the Policy himself as opposed to placing it in an ILIT-such as the 2000 Trust.
- g. That Mr. Spallina and Simon Bernstein had discussion regarding the benefit of maintaining the 1995 Trust as beneficiary of the Policy to simplify administration, avoid probate and assure asset protection from creditors.
- h. That based on Mr. Spallina's discussions with Simon Bernstein, Mr. Spallina is certain that it was Simon Bernstein's intent to avail himself and his family of the

² U.S. Securities and Exchange Commission, Litigation Release No. 23368/September 28, 2015
Securities and Exchange Commission v. Robert Spallina, et. al., Civil Action No. 15-cv-7118 (D.N.J.)

estate planning benefits derived from maintaining the 1995 Trust as beneficiary of the Policy.

- i. That Spallina drafted Simon Bernstein's 2012 Last Will. The 2012 Last Will that Simon Bernstein executed includes a reaffirmation of his intent that all proceeds from insurance policy flow not through his Estate but according to the beneficiary designations for any such policy.

All of Plaintiff's evidence jibes with the two drafts of the 1995 Bernstein Trust. Both drafts include beneficiary designations naming Simon Bernstein's children as the beneficiary of the Bernstein Trust to share equally. Plaintiffs have also submitted the Equifax investigation report that was part of the Policy records, and that report indicates that Simon Bernstein told the investigator that the Policies purchased by the VEBA are owned by a Trust and that the death benefits are generally left to family members. (SoF, ¶30). The Affidavit of Ted Bernstein also shows that on June 21, 1995 when the Bernstein Trust was formed, only two of Simon Bernstein's five children had children of their own. At the time, Simon Bernstein had four minor grandchildren, the eldest of whom was six years old. (SoF, ¶48) Common sense in this case also comports to the written evidence that in 1995, Simon Bernstein formed the 1995 Bernstein Trust to provide life insurance protection to his own immediate family--the five children. Plaintiff's evidence of the formation of the 1995 Bernstein Trust as an express trust is further corroborated by Robert Spallina in his affidavit.

CONCLUSION

When considering this motion, the court must resolve all doubt in favor of the non-movant. The Estate's motion should be denied because Plaintiff's submissions are sufficient to create a triable issue as to whether the 1995 Bernstein Trust or a resulting trust is entitled to the Policy Proceeds as Plaintiffs claim.

Respectfully Submitted,

/s Adam M. Simon

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Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland

Filers: Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually,
Pamela B. Simon (“Plaintiffs”).

and,)
)
PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)
Third-Party Defendants.)
_____)

NOTICE OF FILING

To: SEE CERTIFICATE OF SERVICE ATTACHED

PLEASE TAKE NOTICE that the following documents, copies of which are attached, were filed with the clerk of the court and are hereby served upon you:

- PLAINTIFF’S SUPPLEMENTAL STATEMENT OF UNDISPUTED FACTS
- PLAINTIFF’S SUPPLEMENTAL APPENDIX OF EXHIBITS
- EX. 37 – AFFIDAVIT OF ROBERT SPALLINA AND ATTACHED NOTES
- EX. 38 - PROBATE COURT ORDER ENTERED 12/15/15
- PLAINTIFFS’ MEMORANDUM OF LAW IN OPPOSITON TO THE ESTAT’S MOTION FOR SUMMARY JUDGMENT

DATED: August 24, 2016

RESPECTFULLY,

/s/Adam Simon
Adam M. Simon
#6205304
303 E. Wacker Drive
Ste. 2725
Chicago, IL 60601
(312) 819-0730

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of the documents set forth below to be served upon the undersigned via the Northern District's ECF filing system, and by U.S. mail if indicated, proper postage prepaid to the following on August 24, 2016:

ELIOT IVAN BERNSTEIN
2753 NW 34 St.
Boca Raton, FL 33434
Appearing Pro Se
(By U.S. Mail)

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
Appearing Pro Se
(By U.S. Mail)

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
Appearing Pro Se
(By U.S. Mail)

James J. Stamos
STAMOS & TRUCCO LLP
One East Wacker Drive, Third Floor
Chicago, IL 60601
*Attorney for Intervenor,
Estate of Simon Bernstein*

/s/ Adam M. Simon
Adam Simon, Esq.
303 East Wacker Drive, Suite 2725
Chicago, Illinois 60601
Attorney for Plaintiffs
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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

Simon Bernstein Irrevocable
Insurance Trust Dtd 6/21/95, et al.,

Plaintiffs,

v.

Heritage Union Life
Insurance Co., et al.,

Defendants.

Case No. 13-cv-3643
Judge John Robert Blakey

Filers:
Eliot Ivan Bernstein, Pro Se

**LOCAL RULE 56.1(b)(3) RESPONSE TO INTERVENOR STATEMENT OF
UNDISPUTED MATERIAL FACTS AND LOCAL RULE 56.1(b)(3)(C) STATEMENT OF
ADDITIONAL FACTS REQUIRING THE DENIAL OF INTERVENOR MOTION FOR
SUMMARY JUDGMENT**

COMES NOW Eliot Ivan Bernstein (“Eliot”), a Third Party Defendant, Pro Se and files
this “Response to Summary Judgement” and states under information and belief as follows:

I. THE PARTIES

1. The Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (“1995 Trust”) is a Plaintiff and purports to be an irrevocable life insurance trust formed in Illinois. The Estate disputes the existence and terms of the 1995 Trust. (Intervenor’s Response to Plaintiffs’ Statement of Undisputed Material Facts ¶ 1 (ECF No. 192); Order at 2-4 (ECF No. 220).)

ANSWER:

UNDISPUTED

2. Benjamin Brown, as Curator of The Estate of Simon L. Bernstein (the “Estate”), filed a motion to intervene in this litigation. On July 28, 2014, the Court granted the motion to intervene and the Estate became an Intervenor-Plaintiff. (ECF No. 121.) On November 3, 2014, Brian O’Connell substituted his appearance as the Personal Representative of the Estate. (ECF No. 126.)

ANSWER:

UNDISPUTED

3. Ted Bernstein, both individually and purporting to be Trustee of the alleged 1995 Trust, is a Plaintiff. Ted Bernstein has also been named as a Third-Party Defendant to Eliot Bernstein's third-party claims. Ted Bernstein is one of the five adult children of Simon Bernstein. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 6 (ECF No. 192); Affidavit of Ted Bernstein ¶ 25 (ECF No. 150-31).)

ANSWER:

UNDISPUTED

4. Ted Bernstein will receive over \$300,000, representing 20 percent of the Policy proceeds, if Plaintiffs prevail in this litigation. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 3 (ECF No. 201); Deposition of Ted Bernstein, 9:18-10:4, 118:16-119:14 (ECF No. 192-1).)

ANSWER:

UNDISPUTED

5. Pamela Simon is a Plaintiff, and has been named as a Third-Party Defendant to Eliot Bernstein's third-party claims. Pamela Simon is one of the five adult children of Simon Bernstein. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 10 (ECF No. 192); Affidavit of Pam Simon ¶¶ 2-3 (ECF No. 150-32).)

ANSWER:

UNDISPUTED

6. David Simon is Pamela Simon's husband, Adam Simon's brother, and has been named a Third-Party Defendant to Eliot Bernstein's third-party claims. Adam Simon was previously counsel for all Plaintiffs and is currently counsel for Plaintiffs the 1995 Trust, Ted Bernstein and Pamela Simon, and Third-Party Defendants David Simon and The Simon Law Firm. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 2 (ECF No. 201); Deposition of David Simon, 7:9-10 (ECF No. 192-2); Affidavit of David Simon ¶20 (ECF No. 150-33); ECF Nos. 12, 26, 46, 224 and 226.)

ANSWER:

UNDISPUTED

7. Pamela Simon will receive over \$300,000, representing 20 percent of the Policy proceeds, if Plaintiffs prevail in this litigation. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 2 (ECF No. 201); Deposition of David Simon, 58:13-59:4 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

8. Jill Marla Iantoni is a Plaintiff, and has been named as a Third-Party Defendant to Eliot Bernstein's third-party claims. Jill Marla Iantoni is one of the five adult children of Simon Bernstein. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 9 (ECF No. 192); Affidavit of Jill Iantoni ¶¶ 2-3 (ECF No. 150-34).)

ANSWER:

UNDISPUTED

9. Lisa Sue Friedstein is a Plaintiff, and has been named as a Third-Party Defendant to Eliot Bernstein's third-party claims. Lisa Sue Friedstein is one of the five adult children of Simon Bernstein. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 8 (ECF No. 192); Affidavit of Lisa Friedstein ¶¶ 2-3 (ECF No. 150-35).)

ANSWER:

UNDISPUTED

10. Jill Marla Iantoni and Lisa Sue Friedstein will each receive over \$300,000, representing 20 percent of the Policy proceeds, if Plaintiffs prevail in this litigation. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 4 (ECF No. 201); Deposition of Ted Bernstein, 118:16-119:14 (ECF No. 192-1); Deposition of David Simon, 58:13-59:4 (ECF No. 192-2); Plaintiffs' Exhibit 15 (ECF No. 150-16); Plaintiffs' Exhibit 16 (ECF No. 150-17).)

ANSWER:

UNDISPUTED

11. Eliot Bernstein ("Eliot") was made a Party by virtue of Heritage Union Life Insurance Company's counterclaim for Interpleader, and Eliot filed third-party claims against several Parties as described herein, making Eliot a Third-Party Plaintiff as well. Eliot is one of the five adult children of Simon Bernstein. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 3 (ECF No. 192); Affidavit of Ted Bernstein ¶ 23 (ECF No. 150-31).)

ANSWER:

UNDISPUTED

12. Heritage Union Life Insurance Company (“Heritage”) is the successor to the Capitol Bankers Life Insurance Company (“Capitol Bankers”), which originally issued the Policy to Simon Bernstein in 1982. Heritage was terminated as a party on February 18, 2014 when the Court granted Heritage’s motion to dismiss itself from the Interpleader litigation after having deposited the Policy proceeds with the Registry of the Court pursuant to an Agreed Order. (ECF No. 101.)

ANSWER:

DISPUTED, Filings show that it appears to have been Jackson National Life that deposited the proceeds. There has been no insurance policy contract produced in this case for the policy at issue. A sample contract was provided but this is not Simon Bernstein’s insurance policy contract. Therefore, the term “Policy” does not actually relate to a bona fide life insurance contract on the life of Simon Bernstein and using the term “Policy” may mislead the court to believe a policy exists at this time. There can be no valid “Policy proceeds” as there is no bona fide insurance policy produced at this time. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

II. THE LIFE INSURANCE POLICY

13. In 1982, Simon Bernstein applied for a life insurance policy from Capitol Bankers, which was issued as Policy No. 1009208 (the “Policy”). (Intervenor’s Response to Plaintiffs’ Statement of Undisputed Material Facts ¶ 26 (ECF No. 192); Affidavit of Don Sanders ¶¶ 6, 23 (ECF No. 150-30).) The amount of the Policy proceeds (plus interest) on deposit with the Registry of the Court exceeds \$1.7 million. (ECF No. 101; Plaintiffs’ Exhibit 2 (ECF No. 150-3).)

ANSWER:

DISPUTED: The issued policy has not been produced by any party in this litigation and all references to “the Policy” or the terms of said “Policy” cannot be verified at this time. All such

items are in dispute until such time as proper records, verified records, complete and valid records are produced and authenticated. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

14. The Capitol Bankers Life Insurance Application, dated October 12, 1982 (the “Application”), designates Simon L. Bernstein as the Insured, lists S.B. Lexington, Inc. as his employer, and designates the Owner of the Policy as “First Arlington National Bank Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust.” (Intervenor’s Response to Plaintiffs’ Statement of Undisputed Material Facts ¶ 27 (ECF No. 192); Plaintiffs’ Exhibit 3 (ECF No. 150-4); Affidavit of Don Sanders ¶ 48 (ECF No. 150-30).)

ANSWER:

DISPUTED: The “Application” is a copy of the alleged application for insurance. However, the original application for life insurance must be attached to the binding issued policy and maintained by the insurer with a copy attached to any policies distributed as part of the life insurance contract. Until the insurer produces a bona fide policy for Simon Bernstein with the original application attached this copy may not be the binding application used for the policy. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

15. The Application: (i) directs premium notices to be sent to S.B. Lexington, Inc. Employee Death Benefit Plan c/o National Service Assoc. at 9933 Lawler Ste. 210, Skokie, Illinois 60077; (ii) lists Simon Bernstein’s occupation as an Executive with S.B. Lexington, Inc. located in Skokie, Illinois; (iii) lists Simon Bernstein as the selling agent of the Policy; and (iv) was signed in Illinois. (Intervenor’s Response to Plaintiffs’ Statement of Undisputed Material Facts ¶ 28 (ECF No. 192); Plaintiffs’ Exhibit 3 (ECF No. 150-4); Affidavit of Don Sanders ¶ 48 (ECF No. 150-30).)

ANSWER:

DISPUTED: See answer 14 above.

16. In late 1982 when the Policy was issued: (a) the Policy would have been delivered to the selling agent (i.e. Simon Bernstein), who would have then delivered the Policy to the initial Owner; (b) Simon Bernstein resided and was domiciled in Glencoe, Illinois; (c) Simon Bernstein’s offices were located in Chicago, Illinois; and (d) First Arlington National Bank was

located in Arlington Heights, Illinois. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 28 (ECF No. 192); Plaintiffs' Exhibit 3 (ECF No. 150-4); Affidavit of Don Sanders ¶ 48 (ECF No. 150-30); Affidavit of Pam Simon ¶¶ 22-24 (ECF No. 150-32).)

ANSWER:

DISPUTED: The insurer would have maintained the original policy with the original application and other attachments and any other parties would have received copies of said policy. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

III. THE DESIGNATED BENEFICIARIES

17. At the time the Policy was issued, the only designated beneficiary was First Arlington National Bank as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶¶ 29-30 (ECF No. 192); Plaintiffs' Exhibit 3 (ECF No. 150-4); Affidavit of Don Sanders ¶ 48 (ECF No. 150-30).)

ANSWER:

DISPUTED: As there is no "Policy" or even a copy of the "Policy" provided to this Court or any party in the litigation, the beneficiaries designated on the policy cannot be ascertained. As only a "Sample" policy has been provided it lists only sample beneficiaries and owners. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

18. In June of 1992, LaSalle National Trust, N.A., as Successor Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust, became Owner of the Policy. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 31 (ECF No. 192); Plaintiffs' Exhibit 7 (ECF No. 150-8); Affidavit of Don Sanders ¶ 55 (ECF No. 150-30).)

ANSWER:

DISPUTED: Documents relating to the S.B. Lexington, Inc. Employee Death Benefit Trust aka the VEBA Trust are missing and the terms of successorship have not been provided, nor has a copy of the VEBA Trust been provided despite requests to produce such documents.

19. In November of 1995, Capitol Bankers received a “Request Letter” signed by the Owner of the Policy, LaSalle National Trust, N.A., pursuant to which the following changes were made to the Policy: (a) LaSalle National Trust, N.A., as Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust, was designated primary beneficiary; and (b) the “Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995” (i.e. the 1995 Trust) was designated contingent beneficiary. (Intervenor’s Response to Plaintiffs’ Statement of Undisputed Material Facts ¶ 33 (ECF No. 192); Plaintiffs’ Exhibit 8 at JCK000370 (ECF No. 150-9); Affidavit of Don Sanders ¶¶ 56, 60 (ECF No. 150-30).)

ANSWER:

DISPUTED: All change of beneficiary and change of ownership in policies are also required to be made part of the original insurance contract policy maintained by the insurer and reinsurers and therefore without the bona fide original insurance contract and all attachments produced it cannot be verified that this document JCK000370 was ever made part of the policy by the carrier. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

20. As of September 13, 2012, the date of Simon Bernstein’s death: (a) LaSalle National Trust, N.A., as Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust, was designated primary beneficiary of the Policy; and (b) the “Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995” (i.e. the 1995 Trust) was designated contingent beneficiary of the Policy. (Affidavit of Don Sanders ¶¶ 62, 72 (ECF No. 150-30); Plaintiffs’ Exhibit 8 at JCK000370 (ECF No. 150-9); Deposition of Ted Bernstein, 10:8-10 (ECF No. 192-1).)

ANSWER:

DISPUTED: Again, since there is no “Policy” the beneficiaries of the “Policy” cannot be determined at this time until such time that the bona fide original policy is produced by the insurance carrier or reinsurers. 20(b) is a wholly misleading statement by the Intervenor as the

carrier has claimed that based on parole evidence the contingent beneficiary on the missing policy is the Simon Bernstein Trust, N.A. Since no bona fide insurance contract exists however to confirm who is listed in the policy as contingent beneficiary nobody can be certain who is named on it. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

21. On April 3, 1998, S.B. Lexington, Inc. was voluntarily dissolved and the S.B. Lexington, Inc. Employee Death Benefit Trust was terminated. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 36 (ECF No. 192); Plaintiffs' Exhibit 9 (ECF No. 150-10); Affidavit of Pam Simon ¶ 36 (ECF No. 150-32).)

ANSWER:

DISPUTED: Documents regarding the dissolution of the VEBA and distribution of plan benefits, including individual policies that may have resulted from the dissolution upon any termination have not been produced at this time. Discovery should be opened on these matters.

22. Neither LaSalle National Trust, N.A. as Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust, nor the S.B. Lexington, Inc. Employee Death Benefit Trust itself, has made any claim to the Policy proceeds. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 37 (ECF No. 192); Affidavit of Don Sanders ¶¶ 77(a)-(b), 78 (ECF No. 150-30).)

ANSWER:

UNDISPUTED

23. First Arlington National Bank has not made any claim to the Policy proceeds. Its successor-in-interest, J.P. Morgan Bank, filed a responsive pleading in this action, and then a motion for judgment on the pleadings in which it disclaimed any interest in the Policy proceeds and requested to be dismissed. That motion was granted and J.P. Morgan Bank was dismissed as a Party on March 12, 2014. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 37 (ECF No. 192); ECF No. 60; ECF No. 105.)

ANSWER:

UNDISPUTED - However, First Arlington National Bank, nor JP Morgan are listed at the time of Simon's death on any parole evidence regarding the policy as beneficiaries, either primary or

contingent, as they appear to have been replaced by LaSalle National Trust, NA in all capacities. LaSalle National Trust, NA or its successor Chicago Title is the primary beneficiary according to the insurance companies parole evidence at the time of Simon's death and yet, LaSalle, nor its successor have made claim to the policy and may not at this time have been notified by the carrier that according to their parole evidence they are the alleged beneficiary. Perhaps they might have a copy of the policy.

Plaintiffs have claimed that Bank of America was the successor to LaSalle and while they were made party to this litigation they were let out of this action by the carrier Jackson National/Heritage removing them without any requesting any production or statements from them and the court granted their removal. Perhaps they may have a copy of the policy. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

IV. THE FIRST "EXHAUSTIVE SEARCH" FOR THE 1995 TRUST

24. At least one "exhaustive search" for the 1995 Trust document was conducted between Simon Bernstein's death on September 13, 2012 and December 6, 2012, but no trust document could be found. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 9 (ECF No. 201); Deposition of Ted Bernstein, 55:1-11 and Dep. Ex. 3 at TS004519 (ECF No. 192-1).)

ANSWER:

DISPUTED: There is nothing more than a conclusory statement by Ted Bernstein that an alleged "exhaustive search" was done. Yet, this conclusory statement fails to provide any details of when the search occurred, who was present, what was actually found, the types of areas where records were sought, the traditional areas where records were kept and fails to provide other relevant details. Ted Bernstein claimed that whatever records he found were turned over to his

attorneys at Tescher & Spallina but Tescher & Spallina had no such records in their Production.

Nor has Ted Bernstein turned over any such records.

25. According to David Simon, the first attempt to locate the 1995 Trust document occurred in the winter of 2012-2013. He was aware of the search and advised that no such document was found. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 10 (ECF No. 201); Deposition of David Simon, 59:13-17, 60:4-6 (ECF No. 192-2).)

ANSWER:

DISPUTED. The non-moving party herein has insufficient information to confirm this statement of fact.

26. David Simon also testified that Foley & Lardner, the successor firm to Hopkins & Sutter, and some of the attorneys who broke away from Hopkins & Sutter and started their own firm, were contacted to see if they had a copy of a 1995 Trust document, but they did not. David Simon does not even know whether it was he or someone else who contacted Foley & Lardner and the attorneys, or with whom they specifically spoke, and he testified that whoever it was may have been asked to do so by him, his wife Pamela Simon, or his brother Adam Simon. (Deposition of David Simon, 44:17-45:15, 46:2-4 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

V. IDEAS ABOUT HOW TO OBTAIN THE POLICY PROCEEDS & UNSUCCESSFUL ATTEMPTS TO DO SO

27. On August 15, 2000, Simon Bernstein executed the Simon Bernstein 2000 Insurance Trust (the "2000 Trust"), which identifies the Policy at issue in this litigation as an asset of the 2000 Trust. (Deposition of Ted Bernstein, Dep. Ex. 23 at ¶ 1 and Schedule A (ECF No. 192-1); Order at 5 (ECF No. 220).)

ANSWER:

UNDISPUTED

28. Plaintiffs considered "using" the 2000 Trust to obtain the Policy proceeds, but this option was rejected on or before November 19, 2012 because Pamela Simon was not included as a beneficiary of the 2000 Trust. (Deposition of Ted Bernstein, 48:21-49:9, Dep. Ex. 1 and Dep. Ex. 2 at TS004490 (ECF No. 192-1); Order at 5 (ECF No. 220).)

ANSWER:

UNDISPUTED

29. Plaintiffs' former counsel, Robert Spallina, representing that he was trustee of the 1995 Trust, made an application to Heritage for the Policy proceeds on behalf of Plaintiffs. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 7 (ECF No.201); Deposition of Ted Bernstein, 35:6-16 and Dep. Ex. 1 (ECF No. 192-1); Deposition of David Simon, 81:15-82:2 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

30. On October 19, 2012, Ted Bernstein sent Robert Spallina an email suggesting he had a "solution to the life insurance policy which provides the desired result," that he wanted to discuss and that the initial conversation about it involve only him, Robert Spallina, Pamela Simon and David Simon. The email also asked that Robert Spallina avoid any further overtures to the insurance company until after the initial conversation in order "to avoid any unnecessary confusion" for the insurance company. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 7 (ECF No. 201); Deposition of Ted Bernstein, Dep. Ex. 1 at TS004965 (ECF No. 192-1).)

ANSWER:

UNDISPUTED: However, the emails produced come from a court ordered production¹ calling for "ALL" documents of Tescher and Spallina to be turned over to the Curator of the Estate of Simon at the time, Benjamin Brown, when Spallina and Tescher resigned as counsel and co-trustees and co-personal representatives after their firm was found committing fraud, fraud on the court, fraud on the beneficiaries and fraud on beneficiaries counsel in the Estate and Trust litigations in Florida involving Simon and Shirley Bernstein. It has been learned that NO ORIGINAL DOCUMENTS were produced by Tescher and Spallina and only copies of alleged

¹ February 18, 2014 Martin Colin Order for Production of ALL records from Tescher & Spallina
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20COLIN%20TESCHER%20SPALLINA%20TO%20TURN%20OVER%20ALL%20RECORDS%20PRODUCTION%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

originals, including all of the testamentary documents, were provided violating the court order that would have required the originals to be turned over.

Despite being advised by Eliot Bernstein of the failure of Spallina and Tescher to comply with the court order to produce ALL documents, which would have included ALL Original documents, neither Benjamin Brown, nor his successor in the Estate of Simon, Brian O'Connell, nor Ted Bernstein or his counsel Alan B. Rose, have sought to have Tescher and Spallina comply with the order or sought contempt charges.

Benjamin Brown was given copies of alleged original documents by Tescher and Spallina, see Exhibit 1. It is further alleged that the copies and files tendered to Brown who then turned over the majority of them to parties in the litigation have been being tampered with, including changing files or modifying files used in online exhibits to this court, including the production link exhibited in several prior filings @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140602%20ESTATE%20FILES%20FROM%20BEN%20BROWN%20CURATOR%20DELIVERED%20TO%20HIM%20BY%20TESCHER%20AND%20SPALLINA%20PRODUCTION.pdf> Third Party Plaintiff, Eliot

Bernstein, informed the court that file tampering in these matters was suspected and repeatedly in pleadings has urged the Court to print out and attach the documents at the linked URL's to any pleadings to avoid such hacking and alteration of the records.

This failure to produce ANY original records in a case fraught with fraudulent documents, fraudulent notarizations and more, committed by multiple parties, with new admissions by Spallina in a December 15, 2015 hearing of frauds he committed in the Estate and Trusts and had not revealed the crimes to any party until admitting them under oath in the hearing in Judge Phillips court, makes all records used in these matters questionable as to their authenticity if they

come from the copies of alleged originals produced by Tescher and Spallina who are in violation of the court order to produce that would have required production of the originals and any copies.

31. On November 19, 2012, after Robert Spallina unsuccessfully attempted to claim the Policy proceeds without providing any documentation, David Simon suggested attempting to secure the Policy proceeds on behalf of the Plaintiffs by submitting a waiver and settlement agreement to the insurer. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 8 (ECF No. 201); Deposition of Ted Bernstein, 51:22-52:2, 53:22-54:4 and Dep. Ex. 2 at TS004490 (ECF No. 192-1).) The Plaintiffs tried David Simon's suggestion of a waiver and settlement agreement, but it was not successful because Eliot would not agree. (Deposition of Ted Bernstein, 54:13-25 and Dep. Ex. 3 (ECF No. 192-1).)

ANSWER:

DISPUTED: Robert Spallina did provide documentation and made a formal signed claim form for the policy proceeds alleging he was the "Trustee" of 1995 Trust document. Spallina also provided an incomplete death certificate to the carrier when he filed his claim and failed to notify the carrier at the time that his client Ted Bernstein had claimed that his father may have been murdered by his girlfriend and there was an ongoing Palm Beach County Sheriff investigation and Palm Beach Medical Examiner Autopsy Ted had instigated with the aid of his attorneys according to Ted Bernstein.

The Waiver and Settlement Agreement proposed was not successful because David Simon and Adam Simon filed a Breach of Contract lawsuit in Illinois court based on the carrier's failure to pay the fraudulent claim submitted by Robert Spallina, who has now admitted that he was not and is not the "Trustee" of the 1995 Trust. Thus, Spallina's claim form to the carrier signed as "Trustee" of the 1995 is Prima Facie evidence of insurance fraud and has been reported to state and federal authorities as such for investigation. The Breach of Contract lawsuit was then moved to this Court, where Ted Bernstein suddenly and without any documentation alleges to be the

“Trustee” of the 1995 Trust. Both Ted Bernstein and Robert Spallina have claimed to have never seen the 1995 Trust they claim to be operating under.

32. Between October 19, 2012 and February 8, 2013, the Plaintiffs exchanged many emails discussing how best to obtain the Policy proceeds and referring to an inability to locate the 1995 Trust document. (Order at 5 (ECF No. 220); Deposition of Ted Bernstein, Dep. Exs. 1-4, 8-9 (ECF No. 192-1).) David Simon was a participant in the email exchanges, yet in none of those emails did he relate a recollection that he created the 1995 Trust document for Simon Bernstein, that he saw the final version of the 1995 Trust executed by Simon Bernstein, or that it named Ted Bernstein as successor trustee of the 1995 Trust. (Id.)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production.

33. One of those email exchanges on January 22, 2013 states that “none of us can be sure exactly what the 1995 trust said.” (Deposition of Ted Bernstein, Dep. Ex. 4 (ECF No. 192-1).)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

34. On February, 8, 2013, Pamela Simon informed Ted Bernstein that she could not find a copy of the insurance Policy or the 1995 Trust. (Movants’ Reply to the Estate of Simon Bernstein’s Statement of Additional Facts ¶ 11 (ECF No. 201); Deposition of Ted Bernstein, 60:25-61:10, Dep. Ex. 8 at BT000049, and Dep. Ex. 10 at BT000047 (ECF No. 192-1).)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

35. As of February 14, 2013, the Plaintiffs planned to pursue the Policy proceeds via a Release and Settlement Agreement and have the proceeds paid either to Robert Spallina as trustee or to the Tescher & Spallina trust account. (Deposition of Ted Bernstein, 62:17-63:3 and Dep. Ex. 11 at TS004464 (ECF No. 192-1).)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

36. From March 15, 2013 through April 12, 2013, Robert Spallina on behalf of Plaintiffs was engaged in discussions with Heritage and they planned for Heritage to interplead the funds into court in Florida. (Deposition of Ted Bernstein, Dep. Exs. 15 and 16 (ECF No. 192-1).) Unbeknownst to Mr. Spallina, however, on April 5, 2013, the Plaintiffs, through counsel Adam Simon, filed a lawsuit in the Circuit Court of Cook County seeking to obtain the Policy proceeds from Heritage. (Deposition of Ted Bernstein, Dep. Ex. 16 at TS005253-54 (ECF No. 192-1); Notice of Removal ¶ 1 (ECF No. 1).) As a result, Robert Spallina and the law firm Tescher & Spallina ceased representing Plaintiffs in connection with their efforts to obtain the Policy proceeds from Heritage. (Deposition of Ted Bernstein, Dep. Ex. 16 at TS005252, and Dep. Ex. 17 at TS006547 (ECF No. 192-1).)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

37. Despite David Simon's current claims that he drafted the 1995 Trust document on his computer and saw it after execution, the Complaint filed by his brother on April 5, 2013 makes no reference whatsoever to David Simon having drafted the 1995 Trust or having seen the final version after it was executed, or to the identity of the trustee and successor trustee named in the executed 1995 Trust, or to the alleged fact that Simon Bernstein ever even executed a 1995 Trust document. (Complaint at Law (ECF No. 1-1).)

ANSWER:

UNDISPUTED: It should be noted that Adam Simon when filing this lawsuit knew that his client Ted Bernstein had no 1995 Trust or copy of said 1995 Trust and thus could not at that time

prove that he was in fact a trustee of said trust and yet Adam Simon filed the lawsuit claiming Ted was factually the “Trustee” of the missing or suppressed 1995 Trust and sued parties as if he were factually the “Trustee” and they were factually beneficiaries of a trust he claims never to have seen. No copy of the underlying 1995 Trust was attached to the Complaint and the court was not initially apprised that Ted could not prove his standing as Trustee of an alleged trust he could not produce or had never seen Ted’s standing as Trustee of the 1995 Trust is still a disputed issue in this litigation and Ted should be removed as alleged Trustee until such time that this court can ascertain what if any trust terms apply when no executed original or copy of the trust has been produced.

38. As of August 30, 2013, the 1995 Trust (in any form) could not be located. (Movants’ Reply to the Estate of Simon Bernstein’s Statement of Additional Facts ¶ 16 (ECF No.201); Plaintiffs’ Exhibit 15 at BT000002 (ECF No. 150-16); Deposition of David Simon, 95:9-13 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

VI. THE SEARCH WHICH UNCOVERED THE PURPORTED DRAFTS OF THE 1995 TRUST

39. David Simon claims to have located an unexecuted draft electronic copy of the purported 1995 Trust (i.e. Plaintiffs’ Exhibit 15 (ECF No. 150-16)) on the computer system of The Simon Law Firm on September 13, 2013. (Movants’ Reply to the Estate of Simon Bernstein’s Statement of Additional Facts ¶ 16 (ECF No. 201); Plaintiffs’ Exhibit 15 at BT000002 (ECF No. 150-16); Deposition of David Simon, 95:9-13 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

40. According to David Simon, he located Plaintiffs’ Exhibit 15 with the help of his brother, Adam Simon. (Affidavit of David Simon ¶ 29 (ECF No. 150-33).)

ANSWER:

UNDISPUTED

41. David Simon also claims to have located an unexecuted draft paper copy of the purported 1995 Trust (i.e. Plaintiffs' Exhibit 16 (ECF No. 150-17)) which contains his handwritten notes in the stored files of The Simon Law Firm on or about September 13, 2013. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 17 (ECF No. 201); Plaintiffs' Exhibit 16 (ECF No. 150-17); Deposition of David Simon, 94:13-95:8 (ECF No.192-2); Affidavit of David Simon ¶ 28 (ECF No. 150-33).)

ANSWER:

UNDISPUTED

42. According to David Simon, he located Plaintiffs' Exhibit 16 without anyone else's assistance. (Affidavit of David Simon ¶ 28 (ECF No. 150-33).)

ANSWER:

UNDISPUTED

43. According to Pamela Simon, however, she and David Simon located Plaintiffs' Exhibit 15 and Plaintiffs' Exhibit 16, with assistance from their employees. (Affidavit of Pam Simon ¶ 37 (ECF No. 150-32).)

ANSWER:

UNDISPUTED

VII. THE EXISTENCE AND TERMS OF THE PURPORTED 1995 TRUST

44. Plaintiffs have produced no executed original or executed copy of a written trust agreement reflecting the terms of the purported 1995 Trust. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 6 (ECF No. 201); Answer to Intervenor Complaint ¶ 9 (ECF No. 144); Deposition of Ted Bernstein, 13:13-15 (ECF No. 192-1).)

ANSWER:

UNDISPUTED

45. According to David Simon, he had a conversation with Simon Bernstein on June 20, 1995 about creating an insurance trust, during which Simon Bernstein said he wanted to create one and name his wife Shirley as trustee and David Simon as successor trustee, and David Simon agreed to be successor trustee. David Simon testified that he took handwritten notes of this conversation on Plaintiffs' Exhibit 16. (Plaintiffs' First Amended Complaint ¶ 29 (ECF No. 73); Deposition of David Simon, 39:15-40:1, 40:17-41:1, 41:7-20, 96:3-11 (ECF No. 192-2); Affidavit of David Simon ¶ 28 (ECF No. 150-33).)

ANSWER:

UNDISPUTED

46. The handwritten notes on Plaintiffs' Exhibit 16, however, list the trustee as "Shirley, David, [illegible]?" and list the successor trustee as "Pam, Ted." (Plaintiffs' Exhibit 16 at BT000020 (ECF No. 150-17).)

ANSWER:

UNDISPUTED

47. David Simon testified that his assistant created Plaintiffs' Exhibit 15 by making the modifications reflected in David Simon's handwritten notes on Plaintiffs' Exhibit 16. (Deposition of David Simon, 40:17-41:1, 96:3-11 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

48. Plaintiffs' Exhibit 15, however, identifies the trustee as "Shirley Bernstein" and identifies the successor trustee as "David B. Simon." (Plaintiffs' Exhibit 15 at BT000010 (ECF No. 150-16).)

ANSWER:

UNDISPUTED

49. David Simon testified that, after thinking about it overnight, on June 21, 1995 he asked Simon Bernstein to remove him as successor trustee and make the successor trustees Simon Bernstein's children sequentially. (Deposition of David Simon, 41:17-23 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

50. David Simon averred, however, that he asked Simon Bernstein to appoint only Ted Bernstein as successor trustee. (Affidavit of David Simon ¶ 25 (ECF No. 150-33).)

ANSWER:

UNDISPUTED

51. David Simon testified that he did not change the name of the successor trustee from his own name, and Simon Bernstein then took Plaintiffs' Exhibit 15 to the law firm of Hopkins & Sutter to be finalized and executed. (Deposition of David Simon, 40:2-7, 41:17-42:5 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

52. According to David Simon, he met with Simon Bernstein after the 1995 Trust document was executed and reviewed the final executed version of it, which he claims named Ted Bernstein as the successor trustee. (Deposition of David Simon, 42:6-43:1 (ECF No. 192-2); Affidavit of David Simon ¶ 27 (ECF No. 150-33).)

ANSWER:

UNDISPUTED

53. David Simon testified that, when he met with Simon Bernstein after the 1995 Trust document was executed, he had Simon Bernstein sign a change of beneficiary form to submit to Lincoln Benefit in order to make the 1995 Trust the beneficiary of Simon Bernstein's life insurance policy issued by Lincoln Benefit, and that he would have expected Lincoln Benefit to retain a copy of that form. David Simon also testified that Lincoln Benefit was contacted and they did not have a copy of the 1995 Trust. (Deposition of David Simon, 43:10-44:2 (ECF No. 192-2); Order at 5-6 (ECF No. 220).)

ANSWER:

UNDISPUTED

54. Ted Bernstein, purported trustee of the 1995 Trust, has never seen an executed copy of a 1995 Trust document. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 5 (ECF No. 201); Deposition of Ted Bernstein, 24:6-12 (ECF No. 192-1).)

ANSWER:

UNDISPUTED

55. According to Ted Bernstein, in the summer of 1995, he had a conversation with his father in which his father told Ted that he was forming a life insurance trust for the Policy and that Ted would be one of the trustees. No one except Simon Bernstein and Ted Bernstein was present for the conversation. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 5 (ECF No. 201); Deposition of Ted Bernstein, 23:1-8 (ECF No. 192-1); Affidavit of Ted Bernstein ¶ 88 (ECF No. 150-31).)

ANSWER:

UNDISPUTED

56. Ted Bernstein averred, based on having reviewed the purported drafts of the 1995 Trust document and facts as told to him by David Simon, that Ted was appointed successor trustee of the 1995 Trust. (Affidavit of Ted Bernstein ¶ 99 (ECF No. 150-31).)

ANSWER:

UNDISPUTED

57. Ted Bernstein testified that the bases for his knowledge that he is successor trustee of the 1995 Trust are that he saw his name handwritten on Plaintiffs' Exhibit 16 at page BT000020 (ECF No. 150-17), and after his father's death, David Simon told him that he was successor trustee of the 1995 Trust. When David Simon informed Ted that he was successor trustee, Ted does not recall whether he even remembered the conversation he testified that he had with his father during the summer of 1995. (Deposition of Ted Bernstein, 12:19-16:16, 17:5-17, 24:13-25:3 and Dep. Ex. 22 (ECF No. 192-1).)

ANSWER:

UNDISPUTED

VIII. SIMON BERNSTEIN'S SUBSEQUENTLY-EXECUTED ESTATE DOCUMENTS

58. On August 15, 2000, Simon Bernstein executed the Simon Bernstein 2000 Insurance Trust (the "2000 Trust"), which identifies the Policy at issue in this litigation as an asset of the 2000 Trust. (Deposition of Ted Bernstein, Dep. Ex. 23 at ¶ 1 and Schedule A (ECF No. 192-1); Order at 5 (ECF No. 220).)

ANSWER:

UNDISPUTED:

59. The 2000 Trust document makes no reference to the 1995 Trust (i.e. the "Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995"), which the 2000 Trust would have superseded. (Deposition of Ted Bernstein, Dep. Ex. 23 (ECF No. 192-1); Order at 5 (ECF No. 220).)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina

and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

60. Pursuant to the terms of the 2000 Trust, the Trustees were only authorized to pay the trust principal and income to only Shirley Bernstein and Simon Bernstein's "descendants," with "descendants" being defined to "specifically exclude ... PAMELA BETH SIMON and her descendants." (Deposition of Ted Bernstein, Dep. Ex. 23 at ¶¶ 2(a)-(b), 9 (ECF No. 192-1).)

ANSWER:

DISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

61. On May 20, 2008, Simon Bernstein executed the Simon L. Bernstein Irrevocable Trust Agreement (the "2008 Trust"). The terms of the 2008 Trust, in effect, provide that no inheritance shall pass to Ted Bernstein, Pamela Simon, or the lineal descendants of either Ted Bernstein or Pamela Simon. (Deposition of David Simon, 55:2-17 (ECF No. 192-2); Deposition of Ted Bernstein, Dep. Ex. 25 (ECF No. 192-1).)

ANSWER:

DISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

62. In January 2012, Plaintiff Pamela Simon wrote to her father, Simon Bernstein, expressing her distress over his act of "disinheriting" her, David Simon and their children, as well as Ted Bernstein and his children. (Deposition of Ted Bernstein, Dep. Ex. 26 (ECF No. 192-1).) Pamela Simon wrote the note to her father because she was passionate about the fact that his "estate plan" did not include her and her family or Ted Bernstein and his family. (Deposition of Ted Bernstein, 90:22-25, 91:13-25, and Dep. Ex. 26 (ECF No. 192-1).)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

63. A few months before he died on September 13, 2012, Simon Bernstein arranged a conference call with Robert Spallina, Plaintiffs and some of their spouses. During the call, Simon Bernstein instructed that the assets of his estate and trust would be left to his ten grandchildren and the insurance policy proceeds were to pass to his five children, in an effort to quell some then-existing family acrimony about his girlfriend and about the trust document that disinherited Pamela Simon, Ted Bernstein and their respective children. (Deposition of Ted Bernstein, 90:11-18 (ECF No. 192-1); Deposition of David Simon, 53:1-19, 54:3-55:17 (ECF No. 192-2).)

ANSWER:

DISPUTED: Robert Spallina's new June 2016 Affidavit submitted to this Court states that in the May 10, 2012 conference call the insurance policy was NOT discussed. This contradicts prior claims that it was by parties. Simon Bernstein held the meeting to discuss with his children possible changes he was considering making in his estate plan and gain consent from the three children who were the named beneficiaries to possible changes from them to their children and to include Ted and Pam's children.

64. On July 25, 2012, Simon Bernstein executed the Simon L. Bernstein Amended and Restated Trust Agreement (the "2012 Trust"), which amends and restates in its entirety the 2008 Trust. (Deposition of Ted Bernstein, Dep. Ex. 24 at TS007362 (ECF No. 192-1).) Pursuant to the terms of the 2012 Trust, all of the Plaintiffs shall be deemed to have predeceased Simon Bernstein and all assets are to be passed on equal shares among Simon Bernstein's grandchildren. (Id. at Art. I (B)-(C), Art. III (E)(1).)

ANSWER:

DISPUTED: There has been no original July 25, 2012, Simon L. Bernstein Amended and Restated Trust Agreement (the "2012 Trust") and despite Florida Judge John Phillips order that such trust is valid, no valid original has been produced, similar again to this federal action where original documents at this time have not been produced to validate any document produced by Tescher and Spallina as a valid copy of an original document.

Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production.

65. On September 7, 2012, six days prior to his death, Simon Bernstein prepared a holographic will directing a bequest to Maritza Puccio of, among other things, \$100,000 from his current insurance policy and expressing an intention to change the beneficiary on said policy to reflect his wishes. (ECF No. 192-3 at TS003889). Simon Bernstein directed that the bequest to Ms. Puccio should proceed in the event of his death “with no interruption from family or probate.” (Id.) This document was not witnessed or notarized. (Id.)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production.

66. There is no evidence that Simon Bernstein executed any other Wills or trust agreements between July 25, 2012 and his death on September 13, 2012.

ANSWER:

UNDISPUTED

Third Party Plaintiff Eliot hereby incorporates by reference my prior responses in my filing of Undisputed Facts for the Opposition of Summary Judgement I filed with this Court as additional support herein, see Exhibit 2.

DATED: August 26, 2016

Respectfully submitted by,

/s/ Eliot Ivan Bernstein

Third Party Defendant/Cross Plaintiff PRO SE

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 26, 2016 I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

/s/ Eliot Ivan Bernstein

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